

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCIANO DOLLANO, JR., ACCUSED-APPELLANT.

G.R. No. 188851. October 19, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

On appeal is the Court of Appeals (CA) Decision[1] dated April 16, 2009 in CA-G.R. CR-H.C. No. 02989 affirming with modification the Regional Trial Court (RTC)[2] Decision[3] dated July 31, 2006 in Criminal Case Nos. 1381 and 1382 for Statutory Rape under Article 335 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353, and Criminal Case Nos. 1387 and 1388 for Rape.

Appellant Marciano Dollano, Jr. was charged in four (4) Informations, the accusatory portions of which read as follows:

Criminal Case No. 1381 for Statutory Rape under Article 335 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353

That on or about the month of October, 1995, or barely three (3) months after the death of her mother in July, 1995, at Barangay Hidhid, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, had carnal knowledge of one AAA, [his] own daughter, under 12 years of age, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[4]

Criminal Case No. 1382 for Statutory Rape under Article 335 of the RPC, as amended by RA 8353

That on or about the year 1997, at Barangay Hidhid, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, had carnal knowledge of one AAA, her own daughter, under 12 years of age, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[5]

Criminal Case No. 1387 for Rape under Article 335 of the RPC and as amended by RA 8353 and RA 7659

That on or about the month of November 1998, at Sitio Palali, Barangay Hidhid, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, said accused, did then and there, willfully, unlawfully and feloniously, have carnal knowledge of [his] own daughter BBB, a 15-year-old girl, against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.[6]

Criminal Case No. 1388 for Rape under Article 335 of the RPC and as amended by RA 8353 and RA 7659

That on or about the year 1997, at Sitio Palali, Barangay Hidhid, Municipality of Matnog, Province of

Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, said accused, did then and there, willfully, unlawfully and feloniously, have carnal knowledge of [his] own daughter BBB, a 13-year-old girl, against her will and without his consent, to her damage and prejudice.

CONTRARY TO LAW.[7]

When arraigned with the assistance of his counsel from the Public Attorney's Office (PAO), appellant pleaded not guilty to all the charges.[8]

In Criminal Case Nos. 1381 and 1382, the prosecution presented AAA, whose testimony is summarized as follows:

AAA was raped by her father, the appellant.[9] The first incident occurred at nighttime, inside their house, but AAA could not recall the exact date when it happened.[10] At that time, her mother was already dead for more or less three months[11] and she was home, together with her two younger brothers, her sister BBB, and appellant.[12] While she and her siblings were sleeping inside their room, appellant, who was beside her, removed her shorts and panty, went on top of her,[13] then inserted his penis in her vagina.[14] She felt pain after that.[15] However, she could not ask help from her brothers, who were sound asleep, because of fear as her father was then holding a bolo.[16]

The second incident took place when she was in grade II inside a hut in the mountain of Hihhid, Matnog, Sorsogon.[17] As in the first incident, the second rape happened at nighttime while she, her brothers, and sister were sleeping. Again, appellant removed her shorts and panty then inserted his penis in her vagina.[18] These incidents were allegedly repeated for the third, fourth, and fifth times. AAA did not have the courage to tell anybody about her ordeal. She only had the chance to reveal the incidents when her sister suffered appendicitis and they needed the assistance of the Department of Social Work and Development or DSWD.[19] AAA informed the DSWD representative, who reported the matter to the Philippine National Police of Matnog.[20]

AAA's testimony was corroborated by the medical findings of the Municipal Health Officer (MHO), who also testified[21] during the trial. The medicate certificate showed that upon examination of AAA's genitalia, her vagina admitted two fingers with difficulty, with lacerations at 3, 6 and 9 o'clock positions. [22]

In Criminal Case Nos. 1387-1388, the prosecution presented BBB, whose testimony is summarized as follows:

BBB was raped twice by her father, the appellant.[23] The first incident took place in November 1997 when BBB was more than 12 years old.[24] At that time, their mother already died.[25] She was then living with appellant, together with her sister and younger brothers.[26] It was nighttime and while she and her siblings were sleeping, appellant removed her panty, went on top of her, then inserted his penis in her vagina.[27] She felt pain after the incident.[28] She did not call the attention of her siblings, because they were fast asleep and she was afraid of her father who was then holding a bolo.[29]

The second incident happened in January 1998 when BBB was 14 years old, again in their house. Appellant raped her in the same manner as the first incident.[30] She kept the ordeal to herself because of fear, but later told her friend about it who in turn relayed the story to her grandmother who was a barangay official.[31] She was instrumental in bringing the matter to the barangay captain, the DSWD, and eventually the police authorities.[32] She was then brought to the hospital where she was examined. A medical certificate[33] was issued stating that BBB's vagina admitted one finger with healed hymenal laceration at 3 o'clock position.

During the pre-trial, appellant admitted that he was the father of AAA and BBB.[34] The prosecution likewise presented AAA's and BBB's Certificates of Live Birth[35] to show their ages at the time of the commission of the crimes as well as to prove that appellant is their father.

The defense, on the other hand, presented the brother of AAA and BBB who testified that he did not believe that their father could rape her sisters.[36]

In a sudden turn of events, more than four years after they testified in court for the prosecution, AAA and BBB retracted their previous testimonies that they were raped by their father. AAA explained that she was recanting her previous testimony because she had forgiven her father and he already suffered for a long time and repented for what he had done.[37] She claimed that she filed the case against her father because the latter had been maltreating her.[38] BBB likewise recanted her earlier testimony and claimed that she had forgiven appellant.[39]

On July 31, 2006, the RTC rendered a Decision[40] convicting appellant of all the charges against him. The dispositive portion of the decision reads:

WHEREFORE, premises considered, accused MARCIANO DOLLANO, JR.'S GUILT having been established beyond reasonable doubt, he is hereby sentenced as follows:

a) In Criminal Case Nos. 1381 and 1382 (For: Statutory Rape) he is meted the penalty of RECLUSION PERPETUA for EACH count of Statutory Rape, and to indemnify the victim [AAA] the amounts of Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages;

b) In Criminal Cases Nos. 1387 and 1388 (For Rape) he is meted the penalty of RECLUSION PERPETUA for EACH count of Rape, and to indemnify the victim [BBB] the amounts of Php50,000.00 as civil indemnity and another Php 50,000.00 as moral damages.

With costs de oficio.

The preventive imprisonment already served by said accused shall be credited in the service of his sentences, pursuant to Article 29 of the Revised Penal Code, as amended.

SO ORDERED.[41]

Notwithstanding the recantation of AAA and BBB, the RTC gave credence to their earlier testimonies wherein they clearly narrated how appellant raped them. In Criminal Case Nos. 1381 and 1382, the court appreciated the minority of AAA who was then less than 12 years old. In Criminal Case Nos. 1387 and 1388, the RTC did not impose the supreme penalty of death because the exact age of BBB at the time of the commission of the crime was not stated in the Information, although it was adequately established by the prosecution. In all of the cases, the trial court did not appreciate the circumstance of relationship between AAA and BBB on the one hand, and appellant, on the other, because in their certificates of live birth, although appellant appeared to be their father, the names of their mothers were not the same.[42] The court also explained that recantation does not necessarily negate an earlier declaration.[43] Finally, the court declared that, to be effective, pardon must be bestowed before the institution of the criminal action.[44]

On appeal, the CA affirmed with modification the RTC decision, the dispositive portion of which reads:

WHEREFORE, the foregoing considered, the assailed Decision is AFFIRMED with the MODIFICATION that the amount of civil indemnity, in each case, is increased to P75,000.00 and that accused-appellant is further ordered to pay, in each case, P25,000.00 as exemplary damages. Costs against the accused-appellant.

SO ORDERED.[45]

The appellate court sustained the appellant's conviction based on the testimonies of private complainants and the medical findings of the examining physicians.[46] The CA doubted the voluntariness of private complainants' retractions of their earlier testimonies and considered them unworthy of credence.[47] Contrary, however, to the

RTC's conclusion, the appellate court appreciated the qualifying circumstance of relationship, since AAA's and BBB's certificates of live birth show that appellant is the father of the private complainants. Although the exact age of BBB was not stated in the information, the appellate court appreciated the circumstance of minority as the evidence showed that BBB was indeed below 18 years of age at the time of the commission of the offense and that the offender is her own father. Hence, were it not for RA 9346,[48] the supreme penalty of death should have been imposed. Thus, the CA meted the penalty of reclusion perpetua. The CA likewise modified the civil liabilities of appellant.

Hence, this appeal.

In a Resolution[49] dated September 14, 2009, we notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. However, both parties manifested that they are both adopting their respective briefs before the CA as their supplemental briefs, as their issues and arguments had been thoroughly discussed therein. Thereafter, the case was deemed submitted for decision.

In his Brief, appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES.

II.

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[50]

Appellant faults the CA in giving weight to the testimonies of AAA and BBB, considering that their narration of how the crime was allegedly committed was overly generalized and lacked specific details.[51] He questions private complainants' failure to offer resistance and to ask for help during the alleged commission of the offense. Finally, appellant insists that the court should not have ignored the retraction made by private complainants.

The appeal must fail.

The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case.[52] Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying, it was truly competent and in the best position to assess whether the witness was telling the truth.[53]

In this case, the trial and appellate courts gave credence to the testimonies of AAA and BBB when they were presented as witnesses for the prosecution. They found that their clear narration of how the offenses were committed and their categorical statement that appellant committed them, are sufficient to warrant the conviction of the appellant for four counts of rape.

AAA and BBB testified in open court that on separate occasions, appellant raped them. However, after more than four years, the defense presented AAA and BBB as their witnesses who claimed that they lied when they first testified in court. They maintained that they merely instituted the complaint because appellant had been scolding and maltreating them. In short, there was a recantation of their earlier testimony.

As aptly held by the RTC and the CA, the recantation of both private complainants are insufficient to warrant the

reversal of appellant's conviction. Recantations are frowned upon by the courts. A recantation of a testimony is exceedingly unreliable, for there is always the probability that such recantation may later on be itself repudiated. Courts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary consideration.

It is also a dangerous rule for courts to reject testimony solemnly taken before courts of justice simply because the witness who gave it later changed his mind for one reason or another. This will make a mockery of solemn trials and put the investigation of crimes at the mercy of unscrupulous witnesses.[54] A retraction does not necessarily negate an earlier declaration.[55]

It is significant to note that in Criminal Case Nos. 1381 and 1382 against AAA, the rape incidents occurred prior to the effectivity of RA 8353, or The Anti-Rape Law of 1997 which took effect on October 22, 1997 and classified the crime of rape as a crime against persons. Thus, we apply the old law and treat the acts of rape as private crimes.[56] As provided in Article 344[57] of the RPC, for crimes of seduction, abduction, rape and acts of lasciviousness, pardon and marriage extinguish criminal liability.[58] However, pardon should have been made prior to the institution of the criminal actions.[59]

In this case, AAA gave her testimony in court during the presentation of the evidence for the prosecution. After the prosecution rested its case and during the presentation of the evidence for the defense, AAA again testified to tell the court that she lied when she first testified thereby recanting her previous testimony. Clearly, even if we consider the recantation as pardon on the part of the offended party in favor of appellant, the same cannot be appreciated for purposes of acquitting the accused as it was given definitely after the institution of the criminal action. Once the case is filed in court, control of the prosecution is removed from the offended party's hands and any change of heart by the victim will not affect the state's right to vindicate the atrocity committed against itself.[60] It must be stressed that the true aggrieved party in a criminal prosecution is the People of the Philippines whose collective sense of morality, decency and justice has been outraged.[61]

In Criminal Case Nos. 1387 and 1388, the rape incidents were committed when RA 8353 was already effective wherein rape was considered as a crime against person. The recantation became less significant.

Indeed, AAA and BBB claimed that they lied when they first testified and the truth is that they charged appellant with such grave offenses because they were mad at him for having maltreated them. However, records show that when they were asked why they were recanting their initial testimony, private complainants explained that they had forgiven their father. This, in fact, strengthens their earlier testimony that appellant committed the acts complained of. Undoubtedly, the initial testimonies of AAA and BBB are positive, credible and convincing. Thus, we affirm the court's conviction of appellant.

In Criminal Case Nos. 1381 and 1382, the prevailing law at the time the crimes were committed in 1995 and 1997 (the month when the incident occurred was not specified) was still Article 335 of the RPC as amended by RA 7659, which provide:

Article 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

x x x [62]

Rape under paragraph 3 of the above-mentioned article is termed statutory rape as it departs from the usual modes of committing rape.[63] What the law punishes is carnal knowledge of a woman below 12 years of age. Thus, the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years.[64] As clearly shown in the narration of facts above, the prosecution was able to establish that appellant succeeded in having carnal knowledge with AAA in 1995, or three months after the death of her mother. The incident was repeated in 1997. AAA's testimony was corroborated by the medical findings of the MHO.[65] It was also established through AAA's birth certificate that she was born on September 10, 1987.[66] Thus, at the time of the commission of the first rape incident in 1995, AAA was only eight (8) years old; and at the time of the second rape incident in 1997, she was only 10 years old. Statutory rape was, therefore, committed in 1995 and 1997.

It is immaterial that the prosecution failed to allege in the Information the exact date of the commission of the offenses. It is sufficient that it was alleged therein that in Criminal Case Nos. 1381 and 1382, the crime was committed in October 1995 and 1997, respectively; that AAA was under 12 years of age; and that appellant had carnal knowledge with her. These allegations sufficiently informed appellant that he was being charged with rape of a child who was below 12 years of age. He was definitely afforded the opportunity to prepare his defense. We have repeatedly held that the date of the commission of rape is not an essential element of the crime. It is not necessary to state the precise time when the offense was committed, except when time is a material ingredient of the offense.[67] This Court has upheld the complaints and informations for rape which merely alleged the month and year of its commission. We have also sustained the validity of the information which merely alleged the year of its commission.[68]

In Criminal Case Nos. 1387 and 1388, appellant had carnal knowledge with BBB who, at the time of commission, was more than 12 but less than 18 years of age. BBB was intimidated and could not offer resistance because appellant was holding a bolo. As in the case of AAA, the prosecution adequately established through BBB's testimony that appellant had carnal knowledge with her.

As aptly held by the CA and contrary to the conclusion of the RTC, the prosecution clearly established that private complainants are appellant's own daughters. Although AAA and BBB's mothers appear to be different, it appears from their birth certificates that their father is the same, that is, appellant herein. This fact was even admitted by appellant during the pre-trial. Undoubtedly, the circumstance of relationship was alleged in the information and proven during the trial in all the cases under consideration.

Considering that BBB was less than 18 years of age, and considering further that the crimes were committed by her own father, the CA was correct in convicting appellant of qualified rape in Criminal Case Nos. 1387 and 1388.

On the proper penalty, Article 335 of the RPC is applicable in Criminal Case Nos. 1381 and 1382:

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In Criminal Case Nos. 1387 and 1388, Article 266-B of the RPC is applicable which states:

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

However, as aptly held by the CA, we cannot impose the death penalty in view of RA 9346, and thus impose the lesser penalty of reclusion perpetua for the four counts of rape committed against AAA and BBB. Appellant shall also not be eligible for parole.[69]

As to civil liabilities, the CA aptly awarded a total amount of P150,000.00 as civil indemnity and P150,000.00 as moral damages in favor of BBB for the rape committed in Criminal Case Nos. 1387 and 1388. In addition, considering the attendance of the aggravating circumstances of minority and relationship, the appellate court correctly awarded exemplary damages, but the amount shall be increased from P25,000.00 to P30,000.00 each, or a total of P60,000.00 pursuant to prevailing jurisprudence.[70]

The same amounts shall also be awarded to AAA for the crimes committed in Criminal Case Nos. 1381 and 1382.

WHEREFORE, premises considered, the Court of Appeals Decision dated April 16, 2009 in CA-G.R. CR-H.C. No. 02989 is AFFIRMED with MODIFICATION. Appellant Marciano Dollano, Jr. is hereby found guilty beyond reasonable doubt of two (2) counts of Statutory Rape in Criminal Case Nos. 1381 and 1382 and two (2) counts of Qualified Rape in Criminal Case Nos. 1387 and 1388, and is sentenced to suffer the penalty of reclusion perpetua for each count.

Appellant is ORDERED to pay AAA and BBB P150,000.00 each as civil indemnity, P150,000.00 each as moral damages, and P60,000.00 each as exemplary damages.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Perlas-Bernabe, JJ., concur.

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Japar B. Dimaampao and Ramon R. Garcia, concurring; CA rollo, pp. 129-143.

[2] Branch 55, Irosin, Sorsogon.

[3] Penned by Judge-Designate Adolfo G. Fajardo; records, Vol. I, pp. 140-157.

[4] Records, Vol. I, p. 1.

[5] Records, Vol. II, p. 1.

[6] Records, Vol. III, p. 1.

[7] Records, Vol. IV, p. 1.

[8] Records, Vol. I, p. 24.

[9] TSN, November 22, 2000, p. 3.

[10] Id at 4.

[11] Id. at 5.

[12] Id. at 4.

- [13] Id. at 15.
- [14] Id. at 4.
- [15] Id. at 5.
- [16] Id.
- [17] Id. at 6.
- [18] Id. at 7.
- [19] Id. at 8.
- [20] Id. at 8-9.
- [21] TSN, June 7, 2000, pp. 1-4.
- [22] Records, records, vol. I, p. 11.
- [23] TSN, March 7, 2001, pp. 2-3.
- [24] Id. at 3.
- [25] Id.
- [26] Id.
- [27] Id. at 4.
- [28] Id. at 5.
- [29] Id. at 4.
- [30] Id. at 5.
- [31] Id. at 7.
- [32] Id. at 7-8.
- [33] Records, Vol. III, p. 9.
- [34] Records, Vol. I, p. 142.
- [35] Id. at 123 and records, vol. III, p. 41.
- [36] TSN, November 23, 2005, pp. 1-2.
- [37] TSN, November 25, 2005, p. 4.
- [38] Id. at 5-6.
- [39] Id. at 9-15.
- [40] Supra note 3.
- [41] Records, Vol. I, p. 157.
- [42] Id. at 151-156.
- [43] Id. at 154.

[44] Id.

[45] Rollo, p. 15 (Emphasis supplied.)

[46] CA rollo, p. 138.

[47] Id. at 139.

[48] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[49] Rollo, pp. 23-24.

[50] CA rollo, p. 69.

[51] Id. at 70.

[52] *People v. Padilla*, G.R. No. 167955, September 30, 2009, 601 SCRA 385, 399.

[53] *People v. Lopez*, G.R. No. 179714, October 2, 2009, 602 SCRA 517, 526.

[54] *People v. Dela Cerna*, 439 Phil. 394, 407 (2002).

[55] *People v. Nardo*, 405 Phil. 826, 842 (2001).

[56] *People v. Dela Cerna*, supra note 54.

[57] ART. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness. - The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both the guilty parties if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness, and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices, and accessories after the fact of the above-mentioned crimes.

[58] *People v. Dela Cerna*, supra note 54, at 408.

[59] *People of the Philippines v. Ireneo Bonaagua y Berce*, G.R. No. 188897, June 6, 2011; *People v. Dela Cerna*, id.

[60] *People v. Dela Cerna*, supra note 54, at 408-409.

[61] Id. at 408.

[62] Emphasis supplied.

[63] *People v. Teodoro*, G.R. No. 172372, December 4, 2009, 607 SCRA 307, 314.

[64] Id. at 314-315.

[65] Records, Vol. I, p. 11.

[66] Id. at 123.

[67] People v. Teodoro, supra note 63, at 321.

[68] People v. Ching, G.R. No. 177150, November 22, 2007, 538 SCRA 117, 130.

[69] People of the Philippines v. Lucesio Espina, G.R. No. 183564, June 29, 2011.

[70] Id.

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