

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO GARCIA Y DULAY, ACCUSED-APPELLANT.

G.R. Nos. 120387-88. March 31, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Affidavits of desistance, especially those extracted from poor, unlettered, young and gullible witnesses long after the trial is over, are generally frowned upon. Testimony solemnly given before a court of justice and subjected to the test of cross-examination cannot just be set aside, and a new trial granted on the basis of perfunctory and pro forma affidavits that obviously were not prepared directly by the witnesses themselves but by some legally trained individuals. The credibility of trials and the pursuit of truth cannot be placed at the unilateral disposal of timorous witnesses or made dependent on one-sided statements prepared by notaries.

[The Case]

The Court relies upon this principium in resolving this appeal from the Decision[1]. It was penned by Judge Lorenzo B. Veneracion, who also presided over the trial.¹ of the Regional Trial Court of Manila, Branch XLVII, convicting Appellant Eduardo Garcia of two counts of rape and sentencing him to two terms of reclusion perpetua. Appellant prays that he “be acquitted and/or the case be remanded to the lower court for reception of newly discovered evidence.”[2]

On January 6, 1993, Complainant Joylyn Garcia, accompanied and assisted by her sister Rowena and aunt Librada Nuqui,[3] lodged before the Manila Police a complaint for rape against her father, Appellant Eduardo Garcia.

After preliminary investigation, two separate Informations, docketed as Criminal Case Nos. 93-114437 and 93-114438 and both dated January 8, 1993, were filed by Assistant Prosecutor Ferrer S. Co charging appellant with rape. The Information in Criminal Case No. 93-114437 reads:

“That sometime in the middle part of October 1992, in the city of Manila, Philippines, the said accused, armed with a bladed weapon, did then and there wilfully, unlawfully and feloniously, with lewd designs have carnal knowledge of JOYLYN GARCIA Y NUQUI, who is his daughter age 13 years, and by means of force, violence, threat and intimidation, succeeded in having sexual intercourse with her, against her will and consent.

CONTRARY TO LAW.”[4]

Except for the date of the commission of the crime, the Information in Criminal Case No. 93-114438 was similar to the first:

“That sometime in the 2nd week of November 1992, in the city of Manila, Philippines, the said accused, armed with a bladed weapon, did then and there wilfully, unlawfully and feloniously, with lewd designs have carnal knowledge of JOYLYN GARCIA Y NUQUI, who is his daughter age 13 years, and by means of force, violence, threat and intimidation, succeeded in having sexual intercourse with her, against her will and consent.

CONTRARY TO LAW.”[5]

During arraignment, accused-appellant, assisted by Counsel de Oficio Jesse Tiburan, pleaded not guilty to both charges.[6] The trial court consolidated the two cases and, after due trial, promulgated on August 9, 1994 its assailed Decision,[7] the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered finding [the] accused, Eduardo Garcia y Dulay, guilty beyond reasonable doubt of the crime of rape on two counts and hereby sentences him to suffer the penalty of reclusion perpetua for each count of rape charged in the Informations in these cases.

The accused is further ordered to indemnify the victim, Joylyn Garcia y Nuqui the sum of P100,000.00, Philippine Currency.

SO ORDERED.”[8]

Hence, this appeal.[9] After the promulgation of the assailed Decision, appellant filed before the trial court a motion for a new trial. In its order dated April 21, 1995, the court a quo held that “the Motion for New Trial should be addressed to the Supreme Court.”[10]

[The Facts]

[According to the Prosecution]

In the Appellee’s Brief,[11] dated May 30, 1996, the solicitor general presented the prosecution’s version of the case facts:

“The victim, Joylyn Garcia, a first year student at the Nolasco High School in Tondo, Manila, testified that sometime in the middle of October, 1992, about 9:00 o’clock in the evening, appellant Eduardo Garcia, her father, gave her medicine for her illness. At the time, Joylyn was lying in bed (TSN, p. 3, February 9, 1993).

After Joylyn took the medicine which caused her to sleep, appellant placed himself on top of Joylyn and poked a pointed object on her right side. Appellant then held her arms, spread her knees (legs) and inserted his penis into her vagina. Appellant remained in that position for about three (3) minutes after which he left the house. After the incident, Joylyn reported her ordeal to Librada Nuqui, her auntie (TSN, pp. 4-5, February 9, 1993).

Joylyn continued that sometime in the second week of November, 1992, also in the evening, she was again raped by her father when they were left alone in their house. She likewise reported the incident to her auntie (TSN, pp. 6-7, February 9, 1993).

The records show that after the incidents were reported to the City Hall Detachment, Joylyn was examined by Dr. Manuel Lagonera, medico-legal officer of the Western Police District Command (WPDC). His findings were contained in Report No. WB-93-01 (Exh. “G”) dated February 12, 1993, thus:

PHYSICAL AND VAGINAL EXAMINATION REPORT GENERAL DATA:

“Joylyn N. Garcia, 13 years old, single, presently residing at 362-B Sta. Isabel St., Bo. San Antonio, Zaragosa, Tondo, Manila, consulted the medico-legal office on 5 January 1993 at about 8:45 p.m. accompanied by aunt and sister for physical and vaginal examination as requested by Chief Insp. Honorato Laurel of GAD, WPD.”

GENERAL APPEARANCE AND PHYSICAL EXAMINATION:

Fairly nourished and fairly developed, conscious but incoherent. Mentally unstable with slurred speech.

Breasts - Hemi-spherical in shape with brownish nipples and areolae.

Abdomen - soft and flat without strae [sic] of pregnancy.

Vaginal canal - admits one examining finger with resistance and moist.

Hymen - thin with circular opening and showed incomplete and superficial healed laceration at 3:00 o'clock position with non-coactable edges and not congested.

IMPRESSION/CONCLUSION:

Consistent with a girl who is no longer a virgin.”[12]

[Scenario of the Defense]

The defense claims that appellant did not commit the crime charged. It also prays for a new trial for the reception of newly discovered evidence consisting of the complainant's Affidavit of Desistance,[13] in which she recanted her testimony that she was raped by her father. The Appellant's Brief[14] narrates the facts as viewed by the defense:

“Two Informations for two counts of rape were filed against the [a]ccused by his daughter, Joylyn Garcia[,] allegedly committed [i]n the middle part of October 1992 and November 1992 in their residence in Tondo, Manila.

Complainant was assisted by her sister, Rowena Garcia and her [a]untie, Librada Nuqui when they lodged a complaint in the police detachment, at the ground floor of Manila City Hall sometime on January 6, 1993. Thereafter, accused was arrested and until now, he is detained at the Muntinlupa Penitentiary.

The wife (mother of complainant), brother and grandmother of the complainant testified for the [a]ccused while the sister, Rowena Garcia and their [a]untie, Librada Nuqui initiated this criminal case. There was internal family feud, which furnishes the motive for this charge.

Complainant was a thirteen (13) year old high school student at the time of the incident. Beginning June 1992 up to November 11, 1992, she was staying at the residence of her [a]untie. (T.S.N. of Feb. 23, 1993, p. 7). She was brought to their house on November 11, 1992 already in a state of shock (tulala) and mumbling incoherently. She was treated by a quack doctor. Later[,] she mumbled that she was touched and was being threatened. (Naagrabyado, T.S.N. of 2/23/95, p. 9). Under the pitiful and pathetic situation, the [a]ccused, together with his wife, brought their aforesaid daughter, Joylyn Garcia to the hospital for psychiatric treatment (Exhibit '1').

In December 1992, the mother and wife of the [a]ccused brought their daughter to Phil. General Hospital for treatment. (Exhibit '2', '3-A', '3-B').

For the prosecution, [c]omplainant took the witness [stand] and the doctor who examined her. (Exhibit 'F' and 'F-1'). For the defense, the [a]ccused denied that he raped his own daughter. The wife testified for the [a]ccused and averred that they were sidewalk vendors in Divisoria, Manila and usually arrived home together at about 8:00 p.m. or 9:00 p.m. and usually left at the wee hour of day at about 3:00 a.m. The defense presented Dr. Agueda Sunga and Dra. Anita Poblete of PGH who examined the accused and found her hymen to be still intact. The brother of the [c]omplainant likewise testified that his father could not have raped his sister.

After trial, Judge Veneracion rendered the disputed decision finding the [a]ccused guilty beyond reasonable doubt of two counts of rape.

While the case is on appeal, [c]omplainant executed an Affidavit of Desistance dated November 25, 1995 before the undersigned counsel, recanting her previous testimony and apologized for the grievous mistake in accusing her father. In view of the recantation of said complainant, [a]ccused filed a Motion for New Trial based on newly discovered evidence but the lower court denied the said motion, contained [sic] in an Order dated April 21, 1995 reasoning that 'The Court feels that the Motion for New Trial should be addressed to the

Supreme Court.’

This [a]ppeal is interposed to reverse the finding of the lower court on the ground that the guilt of the [a]ccused has not been proved beyond reasonable doubt, and/or based on constitutional presumption of innocence which has not been overcome especially in the light of the inconsistent testimony of the complainant and her subsequent recantation.”[15]

Joylyn Garcia’s affidavit reads:

“AFFIDAVIT OF DESISTANCE

I, Joylyn Garcia, Filipino, single, of legal age, with postal address at 362-B Sta. Isabel St., Barrio San Antonio, Tondo, Manila, after being duly sworn, hereby depose under oath that:

1. I am the complainant against my father, Eduardo Garcia for rape under criminal case nos. 93-114437, 93-114438, RTC of Manila, Branch 47;
2. I retract my previous testimony in court that I was raped twice by my father, Eduardo Garcia sometime in October and November 1992. It is not true that my father, Eduardo Garcia, raped me at our house. I apologize for the grievous [sic] mistake in accusing my father;
3. The filing of the criminal case was upon instruction of my [a]untie, Roselle Nuqui and my sister, Rowena Garcia. At that time, I was still in shock and suffering from nervous [sic] breakdown. I had no mind of my own. I testified in court pursuant to what was dictated upon me by my said relatives.
4. This affidavit is executed to nullify the decision convicting my father of the crime of rape and to set free my father who was innocent of the crime of rape.

I execute this affidavit to attest to the truth of the foregoing for whatever legal purpose it may serve.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of October 1994 at Manila, Philippines.

(SGD.)

JOYLYN GARCIA

Affiant”[16]

[Issues]

In his Brief, appellant assigns the following “errors committed by the lower court”:

- I. The information is fatally defective as the same was not signed or assisted by the parents;[sic]
- II. The accused should be acquitted as the constitutional presumption of innocence has not been overcome;
- III. The alleged rape is [a] figment of imagination and is not credible; and
- IV. New hearing should be held for [the] reception of newly discovered evidence in view of the recantation of the complainant.”[17]

The Court, in the interest of clarity, will combine the foregoing into two issues:

1. Sufficiency of the complaint
2. Sufficiency of the prosecution evidence and the effect of the recantation.

[The Court’s Ruling]

The appeal is bereft of merit. The affidavit of desistance cannot be the basis for granting a new trial or an acquittal.

[First Issue: Sufficiency of the Complaint]

The defense points out that when the complaint was lodged with the police by Complainant Joylyn Garcia, the latter “was not in full control of her mental faculties as she was still then in a state of shock.”[18] Because of Joylyn’s condition at the time, the complaint should have been filed by her parents. Since it was the complainant’s aunt and elder sister who “assisted” her in filing the complaint, appellant posits that the regional trial court acquired no jurisdiction over the case.[19]

We are not persuaded. Complainant Joylyn Garcia may have been mentally distressed, but she was not proven to be legally incapacitated. In the presence of PO3 Fidel Geronimo, she was able to personally sign her Salaysay or affidavit showing her ravishment. In said Salaysay, she answered the police officer’s questions on why she was there, stating that she was raped by her own father.[20] It was only thereafter that she was assisted by Rowena Garcia, her sister, in narrating how the rape was committed.[21] At any rate, a person is presumed to be in control of his or her faculties. Whoever alleges otherwise has the burden of proof. Aside from his bare allegations, appellant presented no convincing evidence that complainant was legally incapacitated by reason of her mental state when she filed her complaint. Accordingly, it becomes immaterial that only her aunt and elder sister, who were not her guardians, assisted her. Section 5, Rule 110 of the Rules of Court, clearly provides that she could have filed the complaint on her own, viz.:

“xxx The offended party, even if she were a minor, has the right to initiate the prosecution for the above offenses, independently of her parents, grandparents or guardians, unless she is incompetent or incapable of doing so upon grounds other than her minority. xxx”

[Second Issue: Sufficiency of Prosecution Evidence]

After a thorough review of the evidence presented during the trial, we hold that the trial court did not err in convicting appellant. Joylyn Garcia testified that she was twice raped by her own father, as shown by salient portions of her February 9, 1993 testimony:

“PUBLIC PROS.:

Sometime in the middle of October, 1992, do you remember of any unusual incident that happened to you?

A.: Yes, sir

Q.: What was that?

A.: I was then sick at that time lying on a bed, then my father gave me medicine which have [sic] caused me to sleep and he then placed himself on top of me.

Q.: Would you still remember the exact date when that sad experience of yours happened?

A.: I cannot remember the date, sir.

Q.: Was it in the first week of October?

A.: Yes, sir.

Q.: Or it could also be in the 2nd week of October?

A.: Yes, sir.

Q.: After your father placed himself on top of you, what did he do, if you still remember?

A.: He raped me, sir.

Q.: Will you described [sic] how you were raped by your father?

A.: He pointed or poked a pointed object on my right side, then, 'ginalaw niya ako'.

Q.: Will you describe to the Honorable Court how you were abused by your father?

A.: He was holding my 2 arms and spreading my 2 knees. Then he inserted his private organ to my private organ.

Q.: You said your father raped you. If your father is in Court, will you be able to point to him?

A.: Yes, sir.

Q.: Please do.

INTERPRETER:

Witness pointing to a person presently in Court seated at the front row and when asked to give his name, he identified himself as Eduardo Garcia.

PUBLIC PROS.:

You said that your father placed himself on top of you and inserted his private organ to your private organ, is that correct?

A.: Yes, sir.

Q.: After that, what more did he do, if any?

A.: [H]e repeated it, sir.

Q.: What do you mean by 'he repeated it'?

A.: He repeated what he had done to me.

Q.: How long if you remember did he stay on top of you when his penis was inserted inside your organ?

A.: About 3 minutes, sir.

Q.: After 3 minutes, what did your father do?

A.: He just left, sir.

Q.: Do you mean he went out of your house?

A.: Yes, sir.

Q.: How about you, what did you do after your father left and raped you?

A.: I went to my auntie and told her what happened.

Q.: What [sic] happened in the middle part of October, 1992, is that right?

A.: Yes, sir.

Q.: You said you went to your auntie, by the way, what time did your father had [sic] sexual intercourse with you in the middle part of October, 1992?

A.: It was at 9:00 o'clock in the evening.

Q.: After the incident in the middle part of October, 1992, did your father do anything to you?

A.: Yes, sir.

Q.: What was that he did to you?

A.: He again inserted his private organ to my organ.

Q.: In your reckoning, when did your father do this again to you?

A.: I cannot remember, sir.

Q.: You said that the first time you were raped by your father was in the middle part of October. After October, 1992, did your father again rape you or have sexual intercourse with you?

A.: After one month, sir.

Q.: Would that mean the following month, which is November?

A.: Yes, sir.

Q.: Where did your father have sexual intercourse with you for the second time?

A.: In our house, sir.

Q.: Do you still remember what time of the day it happened?

A.: In the evening, sir.”[22]

The foregoing testimony, by itself, is sufficient to overcome the presumption of innocence. Indeed, “when an alleged victim of rape says that she was violated, she says in effect all that is necessary to show that the rape has been inflicted on her and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.”[23] Moreover, the trial court itself gave full credence to the said testimony. Well-settled is the rule that the trial court’s assessment of the credibility of witnesses is conclusive and binding on appellate courts.[24] We find no reason to disregard the trial court’s evaluation of young Joylyn’s testimony.

We are not persuaded by appellant’s insistent denial, which is a weak defense that is easy to fabricate. It failed to overcome Joylyn’s testimony during trial which identified him as the perpetrator of two counts of rape.

Appellant also cites other circumstances which allegedly negate the commission of rape:

1. “[I]t is contrary to human experience that a mother will be so callous and uncaring as to allow the second rape to be committed on her daughter.”
2. A family feud existed between the accused and Librada Nuqui by reason of their quarrel over a market stall.
3. The family abode is located in a crowded squatter area and it is thus “improbable that the crime charged could have been committed without being noticed by the neighbors.”
4. Joylyn’s testimony is inconsistent and incredible because in her Salaysay “she omitted to mention that she was given medicine by her father” and, when queried during cross-examination on this omission, she could not give an adequate explanation, stating instead that her father threatened her with a pointed object.
5. Although appellant’s wife testified that she and her husband usually left and returned home together, Joylyn did not explain why she was home alone with appellant during the alleged rape.

6. From June to November 11, 1992, complainant stayed in the house of Librada Nuqui, but she was already tulala when she returned home.

7. “The alleged rape is not supported by the physical evidence on record,” because of Dr. Poblete’s finding of an intact hymen and testimony that there was no penetration “(e)ven if there has been actual contact.”[25]

The foregoing appear to have been raised *faute de mieux* and do not detract from the correctness of the trial court’s factual finding and conclusion.

The allegation that the mother could not have allowed her daughter to be raped a second time has no factual basis. The record reveals no indication that the mother had any knowledge of either the first or the second rape. It appears that Joylyn never reported the first incident of rape to her mother. Significantly, Joylyn intimated the atrocity to her aunt (Librada Nuqui) and not to her mother.[26]

Moreover, it is implausible that, for a mere squabble over a market stall,[27] Librada Nuqui would allow Joylyn to suffer the untold difficulties and humiliation attendant on a rape prosecution if the accusation were not true. It must be noted that Librada took Joylyn Garcia home and cared for her; in return, Joylyn showered her with a love greater than that which she gave to her parents.[28]

Neither does the crime scene render the commission of the crime impossible. This Court has held that rape “can be committed even in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or where other members of the family are also sleeping. Lust is no respecter of time and place.”[29]

Appellant raises too much ado over the failure of Joylyn to mention in her Salaysay that her father gave her some medicine before he raped her, a detail found however in her testimony. This omission merely shows that her sworn statement was incomplete, but it does not detract from the overall veracity of her testimony.[30] The lapse in her sworn statement was consistent with her mental stress at the time of its execution.

We also find pointless appellant’s insistence that, in view of the testimony of his wife that she and her husband usually left and returned home together, the victim should have explained why she was alone with him during the alleged rape. Such explanation is immaterial. The prosecution’s duty is to prove that the accused committed the crime, not to explain a circumstance of insignificant relevance. As earlier observed, the prosecution successfully discharged this burden.

Equally pointless is appellant’s allegation that the victim stayed in the house of Librada Nuqui from June to November 11, 1992 and was already tulala when she returned. Appellant, however, is not here arguing that the victim never set foot inside the locus criminis during the period in question. On the other hand, Joylyn did testify that, in two instances, her father raped her inside their house.

Likewise, we cannot sustain appellant’s argument that the physical evidence did not support the alleged rape. The medical expert for the prosecution testified that there were hymenal lacerations. Although this was rebutted by Dr. Poblete who appeared for the defense, it must be emphasized that hymenal laceration is not an element of rape. It is sufficient that there was sexual congress, and that this was consummated by the slightest introduction of the male organ into the labia of the pudendum.[31]

On the basis of the evidence presented during trial, the trial court was justified in concluding that appellant committed the crime charged. After the promulgation of the assailed Decision, however, herein appellant presented a “newly discovered evidence” and prayed that a new trial be conducted. In view of the pendency of this appeal, the trial court held that the matter should be addressed to this Court. We shall now resolve it.

[Recantation and Motion for New Trial]

On February 27, 1995, during the pendency of this appeal to this Court, the defense filed before the trial court a timely Motion for New Trial on the basis of an Affidavit of Desistance executed by Complainant Joylyn Garcia on November 25, 1994. Such motion was filed under Sec. 2, Rule 121 of the Rules of Court, which provides:

“Sec. 2. Grounds for a new trial. -- The court shall grant a new trial on any of the following grounds:

- (a) That errors of law or irregularities have been committed during the trial prejudicial to the substantial rights of the accused;
- (b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial, and which if introduced and admitted, would probably change the judgment.”

When confronted with an affidavit of recantation, courts are called upon to weigh countervailing values in our legal and judicial system. A recantation, as a general rule, is not sufficient to warrant a new trial. If it were otherwise, a new trial would be granted whenever an interested party succeeds in intimidating or inducing any or some of the witnesses to retract after trial their testimony, thus, opening the door to endless litigation. It is also injudicious to reject a testimony solely on the basis of such recantation, which may later be repudiated, as this “will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses.”[32] Thus, the Court in *People vs. Junio*[33] held:

“The appellant’s submission that the execution of an Affidavit of Desistance by complainant who was assisted by her mother supported the ‘inherent incredibility of prosecution’s evidence’ is specious. We have said in so many cases that retractions are generally unreliable and are looked upon with considerable disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible 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 accusation in open court by recounting her anguish, Maryjane would suddenly turn around and declare that ‘[a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.’

Thus, we have declared that at most the retraction is an afterthought which should not be given probative value. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who has given it later on changed his mind for one reason or another. Such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable.”

To warrant a new trial, Joylyn’s affidavit of desistance must constitute a recantation and not a mere withdrawal from the prosecution of the case. The Court en banc in *Alonte*,[34] speaking through Mr. Justice Jose C. Vitug, held that the complainant’s affidavit of desistance did not constitute a recantation, because she did not deny the truth of her complaint but merely sought to “be allowed to withdraw” and “discontinue” the case because she wished “to start life anew and live normally again.” She never absolved or exculpated the accused. In other words, a recantation of a prior statement or testimony must necessarily renounce the said statement or testimony and withdraw it formally and publicly.[35]

Although the affidavit of Joylyn states that “[i]t is not true that my father, Eduardo Garcia, raped me at our house,” it is bereft of details or any other badge of credibility, not to say of truth. Such a statement is not sufficient; it is merely a legal conclusion that could not have come directly from the mouth of this young girl.

More likely, it was prepared by a legal mind and presented to the complainant already typed and signature-ready. In comparison with the unpretentious, candid, detailed and credible testimony of Joylyn quoted earlier in this Decision, the affidavit crumbles into a desperate clutch at straws. It is not the withdrawal or recantation or exculpation that the law considers sufficient to overturn the overwhelming evidence earlier given during the trial.

Experience has taught us that it is not difficult to get the signatures of poor, unlettered and gullible witnesses in strangely worded and difficult to decipher legalese contained in affidavits of desistance. In the words of Mme. Justice Ameurfin A. Melencio-Herrera:

“x x x affidavits of recantation can easily be secured from poor and ignorant witnesses for monetary consideration or through intimidation. Recanted testimony is exceedingly unreliable, for there is always the probability that it may later be repudiated. Courts thus look with disfavor at affidavits of retractions of testimony given in open court, and are wary or reluctant to allow a new trial based on retracted testimony. Indeed, it would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness later on changed his mind for one reason or another, for such a rule will make a solemn trial a mockery and will place the investigation of truth at the mercy of unscrupulous witnesses.[36]

In the case at bar, Joylyn executed her affidavit of desistance (1) about one year and nine months after she voluntarily and solemnly gave her testimony before the trial court, and (2) more than ten months after the judgment of conviction was promulgated. This Court is inclined to give credence and faith to this girl's straightforward, detailed and consistent testimony rather than to the brief, perfunctory, pro forma and highly suspect affidavit of desistance which obviously did not emanate directly from her mouth but was merely prepared for her adherence. “It is absurd to disregard a testimony that has undergone trial and scrutiny by the court and the parties simply because an affidavit withdrawing the testimony is subsequently presented by the defense.”[37] It is simply inconceivable that Joylyn, a naive thirteen-year-old girl would falsely accuse her own father of rape and wreak havoc on their family unless her solitary goal is to “bring to justice the satyr whose beastliness [is] the cause of her loss of virginity at a tender age.”[38] Unarguably, her affidavit of desistance -- executed after the completion of the trial and the promulgation of the judgment of conviction -- has no probative value[39] and cannot be the basis for granting a new trial or an acquittal.

WHEREFORE, the appeal is DENIED and the assailed Decision finding Eduardo Garcia guilty beyond reasonable doubt of two counts of rape, sentencing him to two terms of reclusion perpetua and ordering him to pay indemnity of P100,000 is AFFIRMED. Costs against appellant.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug and Quisumbing, JJ., concur.

[1] Rollo, pp. 14-2

[2] Appellant's Reply Brief, p. 9; rollo, p. 90.

[3] In the Appellant's Brief, p. 6 (rollo, p. 38), the defense alleges that the complaint was “initiated” by the complainant's aunt Librada Nuqui and her sister Rowena Garcia; but the complainant testified (TSN, p. 8, February 9, 1993; record, p. 50) that it was another aunt and not Librada Nuqui who accompanied her.

[4] Record, p. 2.

[5] Ibid., p. 8.

[6] Ibid., p. 21.

[7] Rollo, pp. 54-60.

[8] Decision, p. 8; rollo, p. 61.

[9] The case was deemed submitted for resolution on October 18, 1996 upon receipt by this Court of Appellant's Reply Brief.

[10] Records, p. 244.

[11] The Appellee's Brief was signed by Solicitor General Raul I. Goco, Assistant Solicitor General Carlos N. Ortega, and Associate Solicitor Thomas M. Laragan.

[12] Appellee's Brief, pp. 5-8; rollo, pp. 70f-70i.

[13] Record, p. 235.

[14] The Appellant's Brief was signed by Atty. Nelson Y. Ng of the Ng Law Firm.

[15] Appellant's Brief, pp. 1-4; rollo, pp. 33-36.

[16] Records, p. 235; underscoring supplied. The affidavit was undated but it was notarized on November 25, 1995 by Counsel Ng.

[17] Appellant's Brief, p. 4; rollo, p. 36.

[18] Ibid., p. 6; rollo, p. 38.

[19] Ibid., pp. 4 and 6; rollo, pp. 36 and 38.

[20] Salaysay, p. 1; records, p. 4.

[21] Ibid., pp. 1-2; records, pp. 4-5.

[22] Record, pp. 44-47.

[23] People vs. Ramirez, 266 SCRA 335, 348, January 20, 1997, per Panganiban, J.

[24] People vs. Luzorata, G.R. No. 122478, February 24, 1998, pp. 7-8.

[25] Appellant's Brief, pp. 7-9; rollo, pp. 39-41.

[26] TSN, February 9, 1993, p. 10; record, p. 52.

[27] See also People vs. Excija, 258 SCRA 424, 440-441, July 5, 1996.

[28] TSN, February 9, 1993, p. 9, record, p. 51.

[29] People vs. Dabon, 216 SCRA 656, December 16, 1992, per Regalado, J., citing People v. De los Reyes, 203 SCRA 707, November 19, 1991; People v. Mangalino, 182 SCRA 329, February 15, 1990. See also People vs. San Juan, pp. 17-18, G.R. No. 105556, April 4, 1997.

[30] See People vs. Pontilar, Jr. supra, pp. 20-21.

[31] People vs. Castromero, G.R. No. 118992, October 9, 1997; People vs. Ligotan, 262 SCRA 602, September 30, 1996.

[32] People vs. Soria, 262 SCRA 739, 749-750, October 4, 1996, per Davide, Jr., J., Lopez vs. Court of Appeals, 239 SCRA 562, 565-566, December 29, 1994, Reano vs. Court of Appeals, 165 SCRA 525, 530-531, September

21, 1988, *Ibabao vs. People*, 132 SCRA 216, 221, September 28, 1984, and *People vs. Pimentel*, 118 SCRA 695, 704, November 25, 1982.

[33] 237 SCRA 826, 834, October 28, 1994, per Bellosillo, J.

[34] *Alonte vs. Savellano Jr*, G.R. No. 131652 and *Concepcion vs. Savellano Jr.*, G.R.No. 131728, pp. 17-20, March 9, 1998.

[35] *Ibid.*, p. 19; citing *People vs. Ballabare*, 264 SCRA 350, November 19, 1996.

[36] *Ibabao vs. People*, *supra*, p. 221.

[37] *People vs. Ballabare*, 264 SCRA 350, 361, November 19, 1996, per Mendoza, J.³⁷

[38] *People vs. Perez*, 270 SCRA 526, 535, March 26, 1997, per Romero, J.

[39] *People vs. Villorente*, *supra*, p. 660.

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