

FIRST DIVISION

[G.R. No. 181900, October 20, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DEMETRIO SALAZAR, ACCUSED-APPELLANT.**

D E C I S I O N

VELASCO JR., J.:

The Case

This is an appeal from the June 8, 2007 Decision^[1] of the Court of Appeals (Cebu City) in CA-G.R. CR-H.C. No. 00553 entitled *People of the Philippines v. Demetrio Salazar*, which affirmed with modification the conviction of accused-appellant Demetrio Salazar in Criminal Case Nos. A-1620 and A-1621 for two (2) counts of Statutory Rape.

The Facts

On September 6, 1999, two Informations were filed before the RTC charging accused-appellant with two (2) counts of statutory rape. It was alleged that accused-appellant, on two (2) separate occasions, had raped a 12-year-old girl, AAA.^[2] The first Information reads:

That on or about the 18th day of May, 1999, at about 10:00 o' clock in the evening more or less at [XXX], Municipality of Lavezares, Province of Northern Samar, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, who is still at large, with abuse of confidence being his step father, entered the bedroom where [AAA] was sleeping, with lewd designs, did, then and there, willfully, unlawfully and feloniously, cover her mouth and by means of force and intimidation, and taking advantage of his superior strength, undressed her, took off her shorts and panty, place on top of her and have sexual intercourse with one [AAA], who is a minor, 12 years of age, all against the will of the latter.

CONTRARY TO LAW.^[3]

While the second Information states:

That on or about the 25th day of June, 1999, at about 12:00 o' clock midnight more or less at [XXX], Municipality of Lavezares, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable

Court, the above-named accused, who is still at large, with abuse of confidence being his step father, entered the bedroom where [AAA] was sleeping, with lewd designs, did, then and there, willfully, unlawfully and feloniously, cover her mouth and by means of force and intimidation, and taking advantage of his superior strength, undressed her, took off her shorts and panty, placed on top of her and have sexual intercourse with one [AAA], who is a minor, 12 years of age, all against the will of the latter.

CONTRARY TO LAW.^[4]

On December 6, 1999, in his arraignment, accused-appellant pleaded not guilty. On December 13, 1999, pre-trial of the case was terminated. Accused-appellant escaped from detention until he was caught, and the hearing of the case began on July 27, 2000.^[5]

Meanwhile, on February 22, 2000, AAA purportedly executed an Affidavit of Desistance wherein she stated that she was not raped by accused-appellant and that she no longer intends to pursue the cases filed against accused-appellant. During the hearing, she explained that her own mother forced her to execute the affidavit upon threat of harm.^[6]

The prosecution established that AAA is the daughter of BBB with whom accused-appellant was cohabiting. AAA, BBB, and accused-appellant all lived in the same one-room house located in XXX, Lavezares, Northern Samar. AAA's biological father, CCC, was serving time at the Bureau of Corrections in Muntinlupa when the incidents occurred.^[7]

The first rape occurred at about 10:00 in the evening of May 18, 1999. At the time, AAA was only twelve (12) years old. While BBB was out gambling, AAA who was then sleeping in their house was awakened by accused-appellant who had been drinking. He placed his hand over her mouth, removed her panty, and inserted his penis inside her vagina. AAA felt pain in her vagina and tried to scream but was stifled by accused-appellant's hand over her mouth. She cried instead. Afterwards, accused-appellant stood up and returned to where he was previously sleeping.^[8]

When her mother had arrived, AAA told her about the rape. BBB, however, did not believe her and simply dismissed her claims.^[9]

On June 25, 1999, at around midnight, accused-appellant again raped AAA. Accused-appellant first slapped her. He then placed a handkerchief inside her mouth, spread her arms, and inserted his penis inside her vagina while kissing her right cheek. After the act, accused-appellant stood up, drank coffee, and proceeded to go to sleep. AAA again told the incident to her mother, who had arrived from another bout of gambling. BBB confronted accused-appellant. After a short argument, BBB again dismissed her daughter's claims.^[10]

Later, AAA informed her aunt, DDD, about the second rape. Her aunt brought her to the police station to report the incident. She was later examined by the Municipal

Health Officer of Lavezares, Northern Samar.^[11]

For his part, accused-appellant interposed the defense of *alibi*, claiming that on the date of the alleged first rape, he was at his farm at Sitio Napunod, *Barangay* Caburihan, Lavezares, Northern Samar, making copra. He claimed that the farm is six (6) kilometers away and could only be negotiated by hiking for one (1) hour. He further claimed that he was at the farm from May 15, 1999 to May 23, 1999.^[12]

As to the second alleged rape, accused-appellant alleged that while he was at their house in XXX, AAA was not there. He claimed that AAA and her brother, EEE, asked permission from, and was allowed by, their mother BBB to watch a show at the town proper of Lavezares in the evening of June 25, 1999. AAA and EEE allegedly returned home at 7:00 of the following morning.^[13]

At the hearing of the case, the prosecution presented, among others, DDD, as a witness. DDD testified that AAA is her niece. She also presented a Certificate of Baptism wherein it is stated that AAA was born on April 10, 1987.^[14]

Dr. Ethel Parane Simeon, the Municipal Health Officer of Lavezares, was also presented as a witness for the prosecution. She testified that she conducted a medical examination of AAA on June 28, 1999. She also identified the Medico-Legal Certificate containing her findings on such medical examination. In the certificate she found hematomas on the *labia majora* and *labia minora* of AAA. She also found lacerations at the 3, 6, and 11 o'clock positions in AAA's vagina. She concluded that AAA was raped.^[15]

The defense's sole witness was accused-appellant, who alleged that the relatives of the victim's father, CCC, did not approve of his relationship with BBB. CCC's relatives wanted to take custody of AAA. Accused-appellant claimed that the instant cases were instituted to wrest custody of AAA from BBB and himself.^[16]

Thereafter, the RTC issued its Decision dated July 7, 2003, the dispositive portion of which reads:

WHEREFORE, in the light of the prevailing considerations, the court hereby sentences Demetrio Salazar GUILTY beyond reasonable doubt of the two (2) counts of Statutory Rape as defined and penalized by Article 335 of the Revised Penal Code and amended by Republic Act No. 7659 and sentences him to the supreme penalty of DEATH by lethal injection. And indemnity is hereby imposed in the amount of Seventy Five Thousand Pesos (Php 75,000.00); moral and exemplary damages are awarded in the amount of Fifty Thousand Pesos (Php 50,000.00).

Let the records of the entire cases together with the transcript of stenographic notes be forwarded to the Honorable Supreme Court for automatic review.

SO ORDERED.^[17]

The records of the case were then transferred to this Court for automatic review. The parties were directed by the Court to submit their respective briefs. However, in a Resolution dated June 7, 2005,^[18] the Court transferred the case to the CA by virtue of its ruling in *People v. Mateo*^[19] providing for intermediate review by the CA of cases where the penalty imposed by the trial court is death, *reclusion perpetua*, or life imprisonment.

Thereafter, the CA issued the assailed decision, the dispositive portion of which provides:

WHEREFORE, premises considered, this appeal is DENIED. The Decision dated 07 July 2003 of the Regional Trial Court, 5th Judicial Region, Branch 23, Allen, Northern Samar, is AFFIRMED with MODIFICATION that the death penalty imposed on appellant is reduced to *reclusion perpetua*; appellant is sentenced to suffer the penalty of *reclusion perpetua* for each count of rape; appellant is likewise ordered to pay the complainant in Criminal Case No. A-1620 the amounts of Fifty Thousand Pesos (P50,000.00) as moral damages, and Fifty Thousand Pesos (P50,000.00) as civil indemnity; and in Criminal Case No. A-1621 the amounts of Fifty Thousand Pesos (P50,000.00) as moral damages, and Fifty Thousand Pesos (P50,000.00) as civil indemnity.

SO ORDERED.^[20]

The CA found accused-appellant guilty of two (2) counts of simple rape instead of statutory rape. The CA reasoned that the prosecution failed to adduce evidence to establish that the rape victim was twelve (12) years old at the time of the crimes. Further, the CA stated that a baptismal certificate is not sufficient proof of the age of a person. Thus, the victim's age was not established.^[21] The CA then modified the penalty imposed upon accused-appellant^{3/4}from death penalty to *reclusion perpetua*.

Hence, we have this appeal.

The Issues

Accused-appellant, in a Manifestation (In Lieu of Supplemental Brief) dated June 24, 2008,^[22] repleads and adopts all the defenses and arguments raised in his Brief for the Accused-Appellant dated August 6, 2004,^[23] to wit:

ASSIGNMENT OF ERRORS

I.

The Trial Court gravely erred in giving full faith and credence to the testimony of the prosecution witness x x x and in totally ignoring/disregarding the version of the defense.

II.

The Trial Court gravely erred in convicting him of the crime charged despite the fact that his guilt was not proven beyond reasonable doubt.

The Ruling of the Court

The appeal is bereft of merit.

First Issue:

The victim's Affidavit of Desistance cannot be given any weight

Accused-appellant claims that the instant case should have been dismissed by the trial court, considering that AAA had executed an affidavit of desistance exonerating accused-appellant from the crimes charged. The CA, however, did not give any weight to such affidavit on the following reasoning:

The affidavit of desistance relied upon by appellant could not be given any probative weight considering that it was not duly sworn to. Further, when private complainant was confronted about it, she testified that her mother threatened to kill her should she refuse to execute the affidavit.

[24]

In any event, AAA's purported Affidavit of Desistance cannot cause the dismissal of the case. It must be pointed out that the alleged affidavit was executed after the case had already been instituted. Thus, the Court already had acquired jurisdiction over the case and control over the proceedings. As the Court ruled in *People v. Montes*:^[25]

As admitted by appellant, the alleged Affidavit of Desistance of the victim was never identified by her, but submitted in court only after the institution of the rape cases. **Such being the case, the Affidavit -- even when construed as a pardon in the erstwhile "private crime" of rape -- is not a ground for the dismissal of the criminal cases, since the actions have already been instituted.** To justify the dismissal of the Complaints, the pardon should have been made prior to the institution of the criminal actions. (Emphasis supplied.)

In *People v. Ramirez, Jr.*,^[26] the Court was even more circumspect:

As a rule, a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.