

## EN BANC

[ G.R. No. 178325, February 22, 2008 ]

**PEOPLE OF THE PHILIPPINES, Appellee, vs. DOMINADOR SORIANO, SR., Appellant.**

### R E S O L U T I O N

**CARPIO, J.:**

This is an appeal from the 21 April 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00419<sup>[1]</sup> which affirmed the decision of the Regional Trial Court, Branch 29, Bayombong, Nueva Vizcaya, finding appellant Dominador Soriano, Sr. guilty beyond reasonable doubt of multiple rape.

The prosecution charged appellant with raping his then 12-year old daughter AAA, in an Information<sup>[2]</sup> that reads:

That sometime between October 2000 to December 11, 2001, at Barangay San Leonardo, Municipality of Bambang, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with lewd designs, by means of force, threat, intimidation and grave abuse of authority, did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter AAA, 12 years old, against the latter's will and consent, to her own damage and prejudice.

The Information specified Article 266-A of Republic Act No. 8353, Section I, paragraphs (a) and (c) in relation to Republic Act No. 7659, as the law violated.<sup>[3]</sup>

Upon arraignment, appellant pleaded not guilty.<sup>[4]</sup> Thereafter, trial ensued.

The prosecution presented AAA who narrated the harrowing ordeal she went through with her father. AAA testified that one evening in October of 2000 she was awakened from her sleep as she felt someone moving on top of her. She became aware that it was appellant, her father, sexually molesting her. She tried to push her father away but he was too strong. She then tried to reach out to her sister, BBB, who was sleeping nearby, but the latter was sleeping soundly. At that time, her mother was in Manila. Afterwards, appellant threatened to kill AAA if she would tell her mother what transpired. Appellant thereafter repeatedly raped AAA, the last incident took place on 11 December 2001. AAA further testified that her father impregnated her and she eventually gave birth to a baby boy.<sup>[5]</sup>

AAA's testimony was corroborated by her aunt, CCC. CCC testified that on 7 February 2002 she observed that AAA was sick and vomiting. CCC thus accompanied AAA to Dr. Anthony Cortez (Dr. Cortez) for a check-up as a result of which she learned that AAA was pregnant. When CCC asked AAA who fathered her

child, AAA at first did not reveal who made her pregnant. AAA eventually admitted to CCC and Dr. Cortez that appellant raped her and appellant is the father of her child.<sup>[6]</sup>

The prosecution likewise presented Dr. Anthony Cortez, Municipal Health Officer of the Municipality of Bambang, Nueva Vizcaya, who conducted the medico-genital examination of AAA. According to Dr. Cortez, based on the examination he conducted on the victim on 7 February 2002, AAA was in the second trimester of her pregnancy.<sup>[7]</sup>

For his defense, appellant merely denied the charges against him. He claimed that from Monday to Friday, with the exception of his son DDD, his children sleep at the house of their aunt CCC, because his wife works in Manila and cannot take care of them. His children only sleep at home during weekends when their mother is at home. According to Dominador, even when his children are at home, it is his son DDD and his wife who sleep on each of his side and not AAA.<sup>[8]</sup>

The defense also presented EEE, appellant's wife and victim's mother. On the witness stand, EEE presented the affidavit of desistance allegedly executed by AAA.

In its Decision<sup>[9]</sup> of 26 August 2004, the trial court found that "it was conclusively shown that accused Dominador Soriano raped his daughter AAA, several times on or before 11 December 2001, in their house in Barangay San Leonardo, Bambang, Nueva Vizcaya, which caused her pregnancy and giving birth to a baby boy." The dispositive portion of the trial court's decision reads:

WHEREFORE, in view of the foregoing, the accused Dominador Soriano, Sr. is hereby found guilty beyond reasonable doubt of the crime charged, and is hereby sentenced to DEATH. He shall indemnify the victim AAA, Seventy Five Thousand Pesos (P75,000.00) as civil indemnity and Fifty Thousand Pesos (P50,000.00) as moral damages.

On appeal, appellant questioned the ruling of the trial court on the ground that there were inconsistencies in the testimony of AAA as to what transpired during the alleged first rape, in particular as to whether appellant removed her undergarments prior to the sexual act. Appellant further makes issue of the fact that the trial court disregarded the affidavit of desistance signed by his daughter.

In its 21 April 2006 Decision, the Court of Appeals affirmed the trial court's decision and found that the prosecution had proved beyond reasonable doubt the guilt of the accused for the crime of multiple rape. According to the appellate court, AAA's testimony was straightforward, consistent on material points, and unshaken by cross-examination and the alleged minor inconsistency in her narration of events of the first rape did not tarnish her credibility.

The Court of Appeals further ruled that the affidavit of desistance presented by appellant could not exonerate him especially since AAA refused to validate the due execution and veracity of said affidavit in open court.

Hence, this appeal.

Appellant raises the following errors:<sup>[10]</sup>

- 1) The trial and appellate courts failed to appreciate the inconsistencies in the statement of AAA; and
- 2) The trial and appellate courts failed to take into consideration the affidavit of desistance of AAA.

We find no merit in the appeal.

Appellant makes issue of the fact that AAA could not remember whether her father had pulled down her panties. This inconsistency refers merely to a minor and insignificant detail which does not even pertain to the gravamen of the crime. The Court has repeatedly ruled that discrepancies referring only to minor details and not to the central fact of the crime do not affect the veracity or detract from the credibility of a witness' declaration, as long as these are coherent and intrinsically believable on the whole.<sup>[11]</sup> It would be too much to expect AAA, a 13-year old girl then, to remember each and every detail of the fate she suffered under the hands of her father. The Court has recognized that even the most candid of witnesses make erroneous, confused, or inconsistent statements, especially when they are young and easily overwhelmed by the atmosphere in the courtroom. It is even expected when the victim is recounting the painful details of a humiliating experience which are difficult to recall in open court and in the presence of other people.<sup>[12]</sup>

In any case, this issue goes into the credibility of AAA as a witness. Well-settled is the rule that findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. For this reason, the trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood, or misappreciated and which, if properly considered, would alter the result of the case.<sup>[13]</sup> In the case at bar, we find no such circumstance so as to disturb the findings of the trial court.

As the Court of Appeals stated, AAA's testimony was straightforward, consistent on material points, and unshaken by cross-examination. Appellant has failed to come out with any plausible reason why AAA would fabricate a story of rape against him. Equally telling too is the fact that appellant's repulsive act of sexually abusing his own daughter resulted to the birth of a baby boy.

Appellant further argues that the affidavit of desistance is evidence that AAA by her own declaration was not raped by appellant.

This Court looks with disfavor on affidavits of desistance.<sup>[14]</sup> In the case of *People v. Junio*,<sup>[15]</sup> we stated:

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 the 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,** 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. (Emphasis supplied)

The Court notes that it was AAA's mother who presented the affidavit of desistance while on the witness stand. AAA, however, refused to validate the due execution of the affidavit. Moreover, during cross examination, EEE admitted that she had personal knowledge of the act committed by her husband against her daughter and that the affidavit of desistance was executed on the condition that appellant would leave his family, thus:

#### CROSS-EXAMINATION

BY PROSECUTOR TIONGSON:

xxx

Q        You are now going to forgive your husband who committed crime against your daughter, AAA?

ATTY. TAGANAS:

Objection, your Honor. The witness did not say that the husband committed the crime as insinuated by the good prosecutor.

He only said that she had hurt feelings:

PROSECUTOR TIONGSON:

Q        Why do you say that you had hurt feelings against your husband?

A        She (sic) is my husband.

**Q        Do you have personal knowledge**