

THIRD DIVISION

[G.R. No. 147615, January 20, 2003]

**VIRGILIO SANTOS, PETITIONER, VS. THE PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

PUNO, J.:

Before us is a Petition for Review of the Court of Appeals^[1] Decision dated October 19, 2000, in CA-G.R. CR No. 18994, which found the accused, Virgilio Santos, guilty beyond reasonable doubt of the crime of Attempted Rape.

On November 22, 1988, Transuelo de Jesus filed with the Regional Trial Court of Malolos, Bulacan a Criminal Complaint against Virgilio Santos, charging him with Attempted Rape committed as follows:

"That on or about the 10th day of May, 1987, in the municipality of Hagonoy, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously commence the commission of rape directly by overt acts, by then and there forcing one Transuelo Paguinto de Jesus to have sexual intercourse with him by dragging her to an uninhabited place and by means of force and violence; embracing and kissing her, touching her private parts and even undressing her with intent of having carnal knowledge of her; and if the accused was not able to accomplish his purpose, that is, to have carnal knowledge of the said Transuelo Peguinto de Jesus, it was not because of his voluntary desistance but because of the intervention of a third party.

Contrary to law."^[2]

On January 9, 1989, the accused was arraigned, and pleaded not guilty. Trial ensued.

The prosecution established the following facts:

On May 10, 1987, between 8:00 and 9:00 in the evening, the private complainant, Transuelo P. de Jesus, an eighteen-year old housewife, was on her way to buy a mosquito coil or "*kato*" from the store of Marina Ablaza when she was grabbed by the accused, Virgilio Santos, and pulled into a vacant lot. The accused covered her mouth, and then started embracing and kissing her. He also touched her private parts. After forcibly raising the victim's skirt and removing her underwear, the accused lowered his own pants and briefs, and began "poking" the victim's vagina with his penis. Transuelo could only beg for mercy. She could not shout for help as the accused was holding a bladed weapon. At this point, they heard Transuelo's

mother-in-law, Emeteria de Jesus, calling her name. The accused immediately stood up and warned the victim not to tell anyone about what happened, otherwise, he would kill her. Still holding the bladed weapon, the accused left.

Transuelo got up and headed home. She met her mother-in-law about 5 meters away from the place of the incident. When the latter asked where she came from, Transuelo replied that she went to buy "katol" but the store was already closed.

The following morning, Transuelo decided to tell her mother-in-law about the incident. She refused to tell her husband for fear that he would kill the accused. She did tell him, however, two days after the incident. On the same day, she was accompanied by her mother-in-law and reported the incident to the chairman of the barangay. She also filed a complaint with the Municipal Trial Court of Hagonoy, Bulacan, which, however, dismissed said complaint for lack of probable cause. Private complainant appealed the dismissal to the Provincial Prosecutor of Bulacan who likewise dismissed the complaint. Unfazed, the private complainant elevated her complaint to the Secretary of the Department of Justice who reversed the earlier rulings and issued an Order directing the Provincial Prosecutor of Bulacan to file an appropriate case against the accused.

In defense, the accused claims that from 4:00 to 6:00 p.m. on the day of the incident, he played mahjong with Marina Ablaza and two other persons in Ablaza's store. Then, he went home to his mother-in-law's house, located "just opposite the store."^[3] At 6:30 in the evening, he returned to the store to pay for his merienda, then went back home after thirty minutes, and never left again that evening.

The accused avers that the complaint was filed by Transuelo because of a rumor circulating in their neighborhood that he embraced the latter. A misunderstanding between the wife of the accused and Transuelo's mother-in-law developed. He presented witnesses - storeowner Marina Ablaza and neighbor Teodora Gonzales - to corroborate his testimony.^[4]

On February 10, 1993, judgment was rendered by Judge Amante M. Laforteza of the Regional Trial Court of Malolos, Bulacan, Branch 20, finding the accused guilty beyond reasonable doubt of the crime of attempted rape. The dispositive portion of the Decision states:

"WHEREFORE, judgment is hereby rendered finding the accused Virgilio Santos guilty beyond a (*sic*) reasonable doubt of attempted rape with the aggravating circumstance of nighttime and hereby sentences him to suffer an indeterminate penalty of imprisonment of SIX (6) MONTHS AND ONE (1) DAY, as minimum, to TEN (10) YEARS and ONE (1) DAY, as maximum, and to indemnify the complainant Transuelo de Jesus the sum of ONE THOUSAND THREE HUNDRED TWENTY (P1,320.00) PESOS, Philippine Currency, as actual expenses, and the sum of SEVEN THOUSAND (P7,000.00) PESOS, Philippine Currency, as attorney's fees.

Costs against the accused.

SO ORDERED."^[5]

On February 22, 1993, the accused filed a Motion for New Trial or Reconsideration. Four days later, he filed a Supplemental Motion for New Trial or Reconsideration, with attached "Sinumpaang Salaysay" or Sworn Statements of private complainant Transuelo de Jesus and witness Emeteria de Jesus. On April 21, 1993, the Regional Trial Court, through pairing judge, Judge Cesar M. Solis, granted the motion and set aside the February 10, 1993 Decision, viz:

"The Motion for New Trial with the Provincial Prosecutor interposing 'No Objection' has been found to be tenable. In view thereof, the evidence received in the proceedings of March 5, 1993 shall be taken and considered together with the evidence already on record. Accordingly, the decision promulgated on February 10, 1993 is hereby set aside for a new judgment to be rendered therein.

SO ORDERED."^[6]

On November 4, 1994, Judge Oscar C. Herrera of the RTC of Malolos, Bulacan, Branch 20, issued the following Order respecting the pending case:

"Pursuant to the Administrative Circular No. 14-94 of the Honorable Chief Justice Andres R. Narvasa, dated September 14, 1994, authorizing Assisting Judges assigned to the Regional Trial Courts of the National Capital Judicial Region and holding office at Judiciary Planning Development and Implementation Office (JPDIO), Supreme Court, to assist in the resolution of 'inherited cases' in Regions III, IV and V, and the communication to the Court dated September 28, 1994 of Justice Oscar R. Victoriano, Consultant/National Coordinator, JPDIO, Supreme Court that the records of the 'inherited cases' in this sala be forwarded to the said office, let the complete records of the above-entitled case, together with the transcripts of stenographic notes (TSNs) and the exhibits, be forwarded to the Judiciary Planning Development Implementation Office, Supreme Court, Manila for resolution/decision.

SO ORDERED."^[7]

Assisting Judge Recaredo P. Barte then rendered a Decision, dated June 6, 1995, on the "inherited case," the dispositive portion of which states, thus:

WHEREFORE, judgment is hereby rendered finding the accused VIRGILIO SANTOS, guilty beyond reasonable doubt of the crime of Attempted Rape and sentences him to suffer an indeterminate prison term of from four (4) years, two (2) months and one (1) day of prision correccional as minimum, to ten (10) years and one (1) day of prision mayor as maximum, the same being fixed in its maximum period considering the attendance of the aggravating circumstance of nighttime, in the absence of any mitigating circumstance, and to indemnify the offended party Transuelo de Jesus, the sum of P1,320.00 as actual expenses, and P7,000.00 for attorney's fees and to pay the costs.

SO ORDERED."^[8]

On appeal, the RTC Decision was affirmed in toto by the Court of Appeals. The accused moved to reconsider but his motion was denied. Hence, this appeal where

he raises the following assignments of error:

- "A. The Honorable Court of Appeals erred in not giving due credence to the affidavit of desistance of the private complainant and her witness;
- B. The Honorable Court of Appeals erred in disregarding the entries in the barangay blotter of Carillo, Hagonoy, Bulacan, as well as the Police Blotter of PNP-Hagonoy, Bulacan;
- C. The Honorable Court of Appeals erred in ruling in favor of the appellee as to effect of the material discrepancies in the sworn statements of the private complainant and her witnesses;
- D. The Honorable Court of Appeals erred in disregarding the reason for the dismissal of the same case at the Municipal Trial Court and the Provincial Prosecutor's Office;
- E. The Honorable Court of Appeals erred in appreciating nighttime as aggravating circumstance."

The appeal is partly meritorious.

We will jointly resolve the first, second and fourth assignments of error. The accused contends that credence should be given to the affidavits of desistance of the private complainant and her witness even though filed after his conviction. The affidavits of desistance allegedly cast serious doubt on his criminal liability, especially when taken in conjunction with the private complainant's initial complaint entered in the barangay and the police blotters, which contains no allegation of attempted rape. He also stressed the dismissal of the complaint during the preliminary investigation by the municipal trial judge, and subsequently, by the provincial prosecutor.

We are not convinced. It is settled that an affidavit of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention.^[10] The affidavits of desistance filed by the private complainant and her witness were executed twelve (12) days after the promulgation of judgment of conviction, and are clearly mere afterthoughts. Hence, they cannot have the effect of negating a previous credible declaration. As we held in the case of **People vs. Dalabajan**:^[11]

"A recantation does not necessarily cancel an earlier declaration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and especially the demeanor of the witness on the stand. Moreover, it should be received with caution as otherwise it could 'make solemn trial a mockery and place the investigation of truth at the mercy of unscrupulous witnesses.' [People vs. Davatos, 229 SCRA 647 (1994)]

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We have previously held that mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible. [People vs. Dulay, 217 SCRA 103 (1993)] The Court looks with disfavor upon retractions of testimonies previously given in court. The *rationale* for the

rule is obvious: Affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated. [Lopez vs. Court of Appeals, 239 SCRA 562 (1994)]”^[12]

Rationalizing its unwillingness to give weight to the belated affidavits, the trial court aptly held, *viz*:

“Besides, the affidavits of retraction of both the offended party and her mother-in-law, Emeteria de Jesus, had not been subjected to an exhaustive and probing cross-examination, if only to discover the motives that prompted complainant to repudiate her open court declarations and previous written statement executed before Municipal Judge Jose Torres. Had the desistance of offended party come at a seasonable time at least before she had told everything on the witness stand that convinced the trial judge and this Court of her sincerity, or had the accused thought of and earnestly sought the cooperation of offended party before the full dress presentation of prosecution evidence, it would have been less difficult for the court to set aside its judgment of conviction. But here lies already before the Court, a quantum of evidence supportive of the accused’s guilt that is beyond obliteration or capable of being expunged from the court’s record, without committing a miscarriage of justice or judicial anomaly.”^[13]

The accused contends that the entries of Transuelo’s complaint in the barangay and the police blotters prove the innocence of the accused of the crime charged.

The entry in the barangay blotter provides, *viz*:

“Si Bebot ay nagreklamo sa punong barangay na siya ay **niyakap** ni Ver noong Linggo ng gabi sa pagitan ng alas 8:00 at alas 9:00 ng gabi, Mayo 10, 1987.”^[14]

On the other hand, the certification of the entry in the police blotter provides the following:

“‘ACT OF LASCIVIOUSNESS’ The person of Mrs. Transuelo de Jesus, 19 years old, married, of Bgy. Carillo, this [municipality] complained to this [Headquarters] one @ Ver Santos of Bgy. Iba, this [municipality], for Act of Lasciviousness. According to reportee, suspect **forcibly touch (sic) the different parts of her body and threaten (sic) her to kill (sic)**. Incident happened at Bgy. Iba, this [municipality] on 10 May ‘87, between the hour (sic) of 2000H and 2100H.

(SGD.) TRANSUELO DE
JESUS

RECORDED BY:

PAT. ROLANDO B.
RONQUILLO INP
Desk Officer”^[15]