

EN BANC

[G.R. Nos. 136899-904, October 09, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO DELA CERNA, ACCUSED-APPELLANT.**

D E C I S I O N

CORONA, J.:

Irene dela Cerna did not experience and enjoy the natural love and affection of a father. Instead, at fifteen, she went through an ordeal, characterized by suffering and torment perpetrated by the very person who was supposed to protect and shield her from harm — her own father.

Six separate complaints were filed on May 16, 1997 against accused-appellant charging him with rape committed on January 15, 1989, December 26, 1993, March 3, 1996, August 25, 1996, February 10, 1997 and March 5, 1997. The first complaint alleged:

That on or about the 5th day of March, 1997, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is her father, by means of force and intimidation upon undersigned complainant, then only fifteen (15) years old to wit: by carrying her to a room and forcibly lie down on bed and removed her panty and short, placed himself on top of her, did then and there have carnal knowledge with the undersigned against her will.

CONTRARY TO LAW.^[1]

The five other complaints were identically worded except for the dates of the commission of the crime and the age of private complainant.

Upon arraignment, accused-appellant pleaded not guilty. Thereafter, the cases were jointly tried.

As principal witness for the prosecution, Irene recounted her harrowing experience at the hands of her father, which began when she was only seven years old. Her testimony was faithfully summarized by the Solicitor General as follows:

Irene dela Cerna was born on August 26, 1982 at Negros Occidental, San Carlos City (p. 2, TSN, March 25, 1998). She recalled that one afternoon when she was only seven (7) years old, her father, appellant herein, beckoned her to come inside the room. At the time, her mother was not at home. When she went inside the room, appellant undressed her and made her lie down. Appellant then played with her private parts and touched her vagina with his penis which lasted for about fourteen (14) minutes (p. 4, TSN, *ibid.*). Thereafter, appellant instructed her to put on

her clothes as her mother was due to arrive any time. Appellant did the same act to Irene many times (p. 5, id.)

On January 15, 1989 at about 5:00 o'clock in the afternoon, appellant called Irene from inside the room. Once Irene was inside the room, appellant undressed her and made her lie down. Appellant played with her vagina for about ten (10) minutes (p. 5, id.) and "pushed" his penis into the lips of her vagina (p. 16, id.).

On December 26, 1993 at about 5:00 o'clock in the afternoon while her mother was out taking up dressmaking, appellant forced Irene to enter the room. Appellant stripped her naked, forced his penis into her vagina (pp. 14-15, id.) and performed the push and pull movement for about ten (10) minutes. Irene did not shout for help because of fear. In one occasion, Irene saw appellant with a gun. After the rape, appellant cautioned Irene not to report to anybody what happened (p. 16, id.).

On March 3, 1996, at about 5:00 o'clock in the afternoon while her mother was out, appellant called Irene in the room and stripped her naked. Appellant ordered Irene to lie down and mounted on top of her. Appellant inserted his penis into her vagina and performed the push and pull movement. Irene tried to shake appellant off but he was too heavy for her. Irene did not shout for help because of fear that appellant might harm her and her siblings. Irene had witnessed appellant punched her mother on the stomach during a quarrel (pp. 12-13, id.). After the rape, appellant warned her not to tell anybody of what transpired between them (p. 13, id.).

On August 25, 1996, when Irene was fourteen (14) years old, appellant called her from the room. Irene was already reluctant to go alone near appellant as she knew what appellant would do to her. Irene was constrained to go to appellant when her other sister told her to go to him as beckoned. Inside the room, appellant undressed her (p. 7, id.). Irene did not utter a word while she was being undressed because she was afraid that appellant might get angry and she and her siblings will again be subjected to physical abuse as they used to be (p. 8, id.). Irene tried to resist appellant but he was too strong for her (p. 7, id.). Appellant mounted on top of Irene, inserted his penis into her vagina, and performed the sexual act of push and pull. After the sexual act, Irene was ordered to leave the room. On the same day, her mother delivered the dresses she had sewn to her customers. Irene did not report the sexual abuse to the police authorities because she was afraid of appellant and she pitied her mother who was suffering from tension (p.9, id.).

On February 10, 1997 while her mother was out, appellant dragged Irene up the stairs of their new house towards the room. Appellant pushed her on the bed, inserted his penis into her vagina and performed the push and pull movement. The sexual act lasted for just a short time as her mother was expected to arrive any time. Irene hated appellant for raping her. After the rape, appellant warned her not to tell anybody what happened (pp. 18-19, id.).

On March 5, 1997, appellant forced Irene inside the room and stripped her naked. Appellant made her lie down on the bed, inserted his penis into her vagina and performed the push and pull movement for about ten (10) minutes. Irene initially resisted appellant but she was no match for him. After the rape, appellant warned her not to tell anybody what happened. Irene cried thereafter (pp. 20-22, *id.*).

Irene described appellant as a mean person. She was afraid to tell anyone about the rape as she believed appellant is capable of killing her and her siblings (p. 24, *id.*).

Irene eventually revealed the rapes to her two (2) best friends in school, namely, Cheryl Quano and Bernadette Comita. Bernadette, in turn, told her own mother what Irene divulged (p. 27, *id.*). Bernadette's mother talked with Irene regarding the rape incidents after which the former brought her to the office of the Department of Social Welfare and Development (DSWD) at the City Hall where she was interviewed by a social worker (pp. 28-28, *id.*).^[2]

Emma Patalinghug, a social worker at the Department of Social Welfare and Development (DSWD) Center for Women and Children, declared that private complainant, accompanied by her mother, was referred to her office on March 21, 1997. She testified that the victim told her that she had been sexually abused by her father since she was seven years old.^[3]

Dra. Aster Khusravibabadi of the Cebu City Medical Center examined the victim on March 21, 1997 and found "old healed hymenal lacerations at 5:00 and 6:00 o'clock positions, and the introitus admits two fingers with ease."^[4]

Accused-appellant opted not to testify invoking his constitutional right to remain silent.

On September 15, 1998, the defense presented private complainant to prove that she voluntarily executed an affidavit of desistance. Private complainant explained that she decided to forgive her father for the sake of her mother and her younger siblings who experienced pain and difficulty in sustaining their daily needs as their whole family was dependent upon their father for support.^[5]

The affidavit of desistance, dated July 3, 1998, was made in the vernacular and was offered in evidence for the defense. Pertinent portions thereof stated that "complainant was no longer interested in pursuing the cases against her father; the complaints filed with the Prosecutor's Office and in Court were not her voluntary acts as she was only influenced and forced by the people who came to support and intercede in her action; the testimony she made in court on March 25, 1998 was not of her own free will as she was only forced to do so; there were false statements she made during the hearing of the case; she had truly forgiven her father; she wanted harmony and happiness; nobody influenced her to execute the said affidavit of desistance to end the cases she filed against her father x x x."^[6]

On November 29, 1998, the trial court rendered judgment finding accused-appellant Ernesto dela Cerna guilty of six counts of rape, as follows:

WHEREFORE, premises all considered, judgment is hereby rendered finding the accused, ERNESTO DELA CERNA, GUILTY beyond reasonable doubt of the crime of RAPE committed against complainant, IRENE DELA CERNA, his minor daughter, in the aforequoted six (6) charges and consequently, he is hereby imposed the penalty of reclusion perpetua in the aforesaid Third and Sixth Complaints in accordance with the Revised Penal Code and the supreme penalty of DEATH in the First, Second, Fourth, and Fifth Complaints, conformably with the provisions of the Death Penalty Law (R.A. No. 7659) and ordered to pay the complainant Irene dela Cerna, the sums of FIFTY THOUSAND (P50,000.00) PESOS in each of the six (6) cases as damages, with all the accessory penalties provided for by law and to pay the costs.

The entire records of these cases must be forwarded to the Honorable Supreme Court for automatic review.

SO ORDERED.^[7]

Accused-appellant assails said decision and contends that the trial court erred in convicting him despite the insufficiency of evidence to prove his guilt beyond reasonable doubt.

Accused-appellant mainly relies on the affidavit of desistance executed by private complainant, claiming that said affidavit created a reasonable doubt as to his guilt.

An affidavit of desistance is a sworn statement, executed by a complainant in a criminal or administrative case, that he or she is discontinuing or disavowing the action filed upon his or her complaint for whatever reason he or she may cite. A survey of our jurisprudence reveals that the court attaches no persuasive value to a desistance, especially when executed as an afterthought. The unreliable character of this document is shown by the fact that it is quite incredible that a victim, after going through the trouble 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, repeating her accusations in open court and recounting her anguish in detail, will suddenly turn around and declare that she is no longer interested in pursuing the case.^[8]

A careful scrutiny of the affidavit of desistance in this case reveals that private complainant never retracted her allegation that she was raped by her father. Neither did she give any exculpatory fact that would raise doubts about her rape. Plainly, all the affidavit really stated was that she had decided to withdraw the complaints as she had already forgiven her father and she wanted peace and happiness for her family. Rather than contradict, this affidavit reinforces complainant's testimony that accused-appellant raped her on several occasions.

Likewise, when asked on the witness stand what prompted her to sign the affidavit, Irene answered:

Q: What prompted you to write that letter?

A: I was already staying with the DSWD and my condition there was all right but the problem was my mother, whenever she visited me, she told me that they were really hard in their daily existence. They were just staying in the house of a

friend and they have no means to support themselves. My brothers and sister at times cannot even go to school because of lack of money and they cannot eat properly.^[9]

But, in her earlier testimony for the prosecution, Irene demonstrated a firm resolve to have accused-appellant punished for his crime, as can be gleaned from the following:

Prosecutor Solima

Q: Are you aware that your father would be penalized the moment he would be convicted for the crime of rape?

A: Yes, sir.

Court

Q: And you would want him to die?

A: Although I have forgiven him for what he did to me considering that he is my father, but I will not also agree that he will not be penalized of imprisonment for what he did to me.^[10]

Also, during cross-examination, Irene testified:

Atty. Porio

Q: And you earlier testified that you pity your mother and that you have forgiven your father for what he had done to you, do you know that if it is proven that your father is guilty he would be sentenced to a death penalty?

A: Yes, sir.

Q: Are you not bothered by your conscience if your father would be sentenced to death?

A: Yes I would surely be bothered but that is his fault.^[11]

A comparison of Irene's previous and subsequent testimonies leads to the inference that the affidavit of desistance was executed merely as an afterthought. As such, it has no persuasive effect.

Accused-appellant cannot capitalize on Irene's affidavit of desistance. Such an affidavit, by and of itself, does not mean that what she previously said was false or the recitals of the affidavit itself are true. On the contrary, the Court has invariably regarded such affidavits as exceedingly unreliable. The reason is because affidavits of retraction can all too easily be secured from poor and ignorant witnesses, usually through intimidation or monetary consideration. Thus, there is always the probability that they will later be repudiated and there will never be an end to criminal litigation.^[12] It is also a dangerous rule for courts to reject testimony