

## FIRST DIVISION

[ G.R. No. 120387-88, March 31, 1998 ]

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

### D E C I S I O N

#### **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<sup>[1]</sup>. It was penned by Judge Lorenzo B. Veneracion, who also presided over the trial.<sup>1</sup> 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.”<sup>[2]</sup>

On January 6, 1993, Complainant Joylyn Garcia, accompanied and assisted by her sister Rowena and aunt Librada Nuqui,<sup>[3]</sup> 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.”<sup>[4]</sup>

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.”<sup>[5]</sup>

During arraignment, accused-appellant, assisted by Counsel *de Oficio* Jesse Tiburan, pleaded not guilty to both charges.<sup>[6]</sup> The trial court consolidated the two cases and, after due trial, promulgated on August 9, 1994 its assailed Decision,<sup>[7]</sup> 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 ₱100,000.00, Philippine Currency.

SO ORDERED.”<sup>[8]</sup>

Hence, this appeal.<sup>[9]</sup> 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.”<sup>[10]</sup>

## The Facts

### *According to the Prosecution*

In the Appellee’s Brief,<sup>[11]</sup> 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."<sup>[12]</sup>

#### *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,<sup>[13]</sup> in which she recanted her testimony that she was raped by her father. The Appellant's Brief<sup>[14]</sup> 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]ppel 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."<sup>[15]</sup>

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”<sup>[16]</sup>

## 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;<sup>[sic]</sup>

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.”<sup>[17]</sup>

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.”<sup>[18]</sup> 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. <sup>[19]</sup>

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.<sup>[20]</sup> It was only thereafter that she was assisted by Rowena Garcia, her sister, in narrating how the rape was committed.<sup>[21]</sup> 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