

THIRD DIVISION

[G.R. No. 218404, December 13, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
ROLANDO BAGSIC Y VALENZUELA, ACCUSED-APPELLANT.**

DECISION

MARTIRES, J.:

This is an appeal from the Decision,^[1] dated 30 June 2014, of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 06043 which affirmed with modification the Joint Decision,^[2] dated 30 January 2013, of the Regional Trial Court, Branch 38, San Jose City (RTC), in Criminal Case Nos. 1515-09-SJC and 1516-09-SJC finding Rolando Bagsic y Valenzuela (*accused-appellant*) guilty of rape by sexual assault and of statutory rape.

The Facts

On 21 July 2009, three Informations were filed before the RTC charging accused-appellant with one (1) count of statutory rape, one (1) count of rape by sexual assault, and one (1) count of violation of Section 5 (b) of Republic Act No. 7610 (*R.A. No. 7610*).

In Criminal Case No. 1514-09-SJC, the information states:

That on or about March 15, 2009, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully, feloniously and with lewd design, commit lascivious conduct on the person of (AAA), a 12 year-old minor by mashing the latter's breast, against her will, which acts debase, degrade and demean the dignity of the latter and impair her normal growth and development and to her damage and prejudice.

CONTRARY TO LAW.^[3]

In Criminal Case No. 1515-09-SJC, the information states:

That on or about April 18, 2009, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously has inserted his finger into the vagina (sexual assault) of the offended party, (BBB), a minor, who is eight (8) years of age, to her damage and prejudice.

CONTRARY TO LAW.^[4]

In Criminal Case No. 1516-09-SJC, the information states:

That sometime in 2007, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously has sexual intercourse or carnal knowledge with the offended party, (BBB), a minor, who is eight (8) years of age, to her damage and prejudice.

CONTRARY TO LAW.^[5]

Accused-appellant pleaded not guilty to the crimes charged.

Version of the Prosecution

The prosecution presented AAA, BBB, and their mother CCC as witnesses. Their combined testimony tended to establish the following:

AAA and BBB were born on 2 August 1996 and 18 June 2000, respectively. They called accused-appellant "Lolo" as he was the common-law husband of their maternal grandmother.^[6]

Sometime in 2007, while BBB was playing with her sisters, accused-appellant called her and brought her to a hut in a field located at Zone 7, Sto. Nino 3rd, San Jose City, Nueva Ecija. Inside the hut, accused-appellant told BBB to lie down, lifted her shirt, and removed her shorts and underwear. Accused-appellant then removed his lower garments and had carnal knowledge of BBB, but he was unable to make a full penetration.^[7]

BBB cried and pushed accused-appellant away. She did not shout for help for fear that accused-appellant would hurt her. Whenever someone came by the field, accused-appellant desisted from assaulting her.^[8]

For several times, thereafter, whenever accused-appellant urinated, he made BBB watch him and hold his penis.^[9]

The assault upon BBB was repeated on 18 April 2009 at about five o'clock in the morning. At that time, BBB and her two female siblings had to sleep in accused-appellant's house because their mother was at the hospital attending to AAA. While in bed, BBB was awakened by a finger being inserted into her vagina. When she opened her eyes, BBB saw accused-appellant. Sensing that BBB was already awake, accused-appellant left.^[10]

About a month earlier or on 15 March 2009, AAA and her siblings stayed with accused-appellant and their maternal grandmother because their parents had to attend the wake of a deceased relative. At around four o'clock in the morning, AAA was awakened by somebody, whom she identified to be accused-appellant because of his rough hand and odor, fiddling her nipple. The incident lasted for about two minutes. Accused-appellant stopped when he realized that AAA's siblings were already awake.^[11]

Thereafter, AAA and her siblings rose from bed and prepared breakfast. AAA did not tell anyone about the incident out of fear. It was only when BBB revealed the sexual acts committed against her by accused-appellant that AAA also mustered the courage to speak out.^[12]

During the presentation of the prosecution's evidence, however, an Affidavit of Desistance,^[13] dated 15 May 2012, was executed by AAA, BBB, and CCC.

Version of the Defense

The defense presented the maternal grandmother of AAA and BBB as its sole witness. She testified that accused-appellant became her common-law partner in February 2010, about a year after the death of her husband. Her family resented her relationship with accused-appellant because she was no longer able to support them and their disagreement resulted in the filing of the rape cases against accused-appellant.^[14]

The RTC Ruling

In its decision, dated 30 January 2013, the RTC acquitted accused appellant for violation of Section 5 (b) of R.A. No. 7610 for failure of the prosecution to sufficiently establish the identity of the perpetrator. It observed that AAA admitted that she was not able to see the face of the person who assaulted her but that she concluded that said person was accused-appellant on the basis of the assailant's rough hand and odor. The RTC reasoned that AAA's mere general statement that the person who touched her breasts had the same rough hand and odor as the accused-appellant was not conclusive proof of the latter's identity as the culprit absent any showing why and how such could distinctly be attributable to accused-appellant.

The trial court, however, found accused-appellant guilty of statutory rape and of rape by sexual assault. It noted that BBB, even at such a young age, was able to withstand the lengthy cross-examination. The RTC held that the affidavit of desistance was not sufficient to reverse BBB's earlier testimony clearly narrating how accused-appellant had sexually molested her on two occasions. It added that the allegation that the cases were concocted by CCC to force a separation between accused-appellant and her mother should not be given weight because no parent would be so depraved to use her own daughter for such trivial purpose.

Finally, the RTC ruled that it was conclusively established that in 2007 and on 18 April 2009, BBB was under 12 years of age as evidenced by her birth certificate and by the defense's admission during the pre-trial conference that she was barely eight years old on 18 April 2009. It concluded that BBB's straightforward testimony duly proved that accused appellant had carnal knowledge of her in 2007 and had assaulted her by inserting his finger into her vagina on 18 April 2009. The *fallo* reads:

WHEREFORE, his guilt for the offense charged in Criminal Case No. 1514-2009-SJC not having been established beyond reasonable doubt, the accused Rolando Bagsic is ACQUITTED.

Said accused, however, is hereby found guilty of rape defined and penalized under Art. 266-A in relation to Art. 266-B of the Revised Penal Code in Criminal Cases No. 1515-2009-SJC and No. 1516-2009-SJC and is accordingly sentenced as follows:

- a. In Criminal Case No. 1515-2009-SJC, to suffer an indeterminate penalty of imprisonment ranging from four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, for rape through sexual

assault;

- b. In Criminal Case No. 1516-2009-SJC, to suffer the penalty of reclusion perpetua, for statutory rape, and such accessory penalties provided for by law.

The accused is likewise found liable to pay BBB the following:

	In Crim. Case No. 1515- 2009-SJC	In Crim. Case No. 1516- 2009-SJC
a. Indemnity	P30,000.00	P50,000.00
b. Moral damages	P30,000.00	P50,000.00
TOTAL	P60,000.00	P100,000.00

All of which must earn interest at the rate of 6% per annum from finality of this judgment until fully paid.^[15]

Aggrieved, accused-appellant appealed before the CA.

The CA Ruling

In a decision, dated 30 June 2014, the CA affirmed the conviction of accused-appellant but modified the amount of damages awarded. It opined that the court *a quo* correctly accorded credence to the testimony of BBB after finding her answers to the questions on direct and cross-examination to be intelligible, candid, and unwavering. The CA found no merit in accused-appellant's attempt to discredit BBB's testimony by imputing ill motive against her; that is, that she had charged accused-appellant with rape at the instance of CCC who harbored resentment against him for being the common-law husband of her mother.

The appellate court pointed out that during the hearing on 7 June 2011, BBB affirmed that she was executing an affidavit of desistance, but she remained silent when asked if accused-appellant did not actually rape her. It added that BBB's testimony was corroborated by the Medico-Legal Report, dated 5 May 2009, finding that BBB's hymen suffered from incomplete laceration which suggested blunt or penetrating trauma. The CA disposed the case in this wise:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Joint Decision, dated January 30, 2013 of the Regional Trial Court, Branch 38, San Jose City is AFFIRMED with MODIFICATION in that appellant Rolando Bagsic is further ordered to pay private complainant BBB the amount of Thirty Thousand Pesos (P30,000.00) as exemplary damages in Criminal Case No. 1516-2009-SJC for statutory rape; and Thirty Thousand Pesos (P30,000.00) in Criminal Case No. 1515-2009-SJC for rape by sexual assault, in addition to the other award of damages, all of which are subject to interest of six percent (6%) per annum from the date of finality of this judgement until they are fully paid.^[16]

Hence, this appeal. Accused-appellant adopts the same assignment of error he raised before the appellate court, *viz*:

LONE ASSIGNMENT OF ERROR

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[17]

Accused-appellant asserts that he should be acquitted of the crimes charged because the testimonies of the prosecution witnesses raised reasonable doubt on whether he sexually abused BBB considering that the latter subsequently executed an affidavit of desistance. He avers that the filing of the cases was only due to the resentment of CCC towards him.^[18]

THE COURT'S RULING

The appeal is bereft of merit.

BBB's affidavit of desistance cannot be given any weight.

BBB's affidavit of desistance is not a ground for the dismissal of the case. Rape is no longer considered a private crime as R.A. No. 8353 or the Anti-Rape Law of 1997 has reclassified rape as a crime against persons.^[19] Rape may now be prosecuted *de officio*; a complaint for rape commenced by the offended party is no longer necessary for its prosecution.^[20] Hence, an affidavit of desistance, which may be considered as pardon by the complaining witness, is not by itself a ground for the dismissal of a rape action over which the court has already assumed jurisdiction.^[21]

Moreover, it has been consistently held that courts look with disfavor on affidavits of desistance. The rationale for this was extensively discussed in *People v. Zafra*:^[22]

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 [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, [the rape victim] 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 gave it later on changed his mind for one reason or another. Such a rule [would] make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable.^[23] [emphasis omitted.]

In addition, when asked by the court *a quo* whether her affidavit of desistance meant that she was not raped by accused-appellant, BBB simply did not answer.^[24] Neither did she give any exculpatory fact that would raise doubts about the rape.