

THIRD DIVISION

[G.R. No. 188851, October 19, 2011]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCIANO DOLLANO, JR., ACCUSED-APPELLANT.**

D E C I S I O N

PERALTA, J.:

On appeal is the Court of Appeals (CA) Decision^[1] dated April 16, 2009 in CA-G.R. CR-H.C. No. 02989 affirming with modification the Regional Trial Court (RTC)^[2] Decision^[3] dated July 31, 2006 in Criminal Case Nos. 1381 and 1382 for *Statutory Rape* under Article 335 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353, and Criminal Case Nos. 1387 and 1388 for *Rape*.

Appellant Marciano Dollano, Jr. was charged in four (4) Informations, the accusatory portions of which read as follows:

Criminal Case No. 1381 for Statutory Rape under Article 335 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353

That on or about the month of October, 1995, or barely three (3) months after the death of her mother in July, 1995, at Barangay Hidhid, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, had carnal knowledge of one AAA, [his] own daughter, under 12 years of age, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.^[4]

Criminal Case No. 1382 for Statutory Rape under Article 335 of the RPC, as amended by RA 8353

That on or about the year 1997, at Barangay Hidhid, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, had carnal knowledge of one AAA, her own daughter, under 12 years of age, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.^[5]

Criminal Case No. 1387 for Rape under Article 335 of the RPC and as amended by RA 8353 and RA 7659

That on or about the month of November 1998, at Sitio Palali, Barangay Hidhid, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, said accused, did then and there, willfully, unlawfully and feloniously, have carnal knowledge of [his] own daughter BBB, a 15-year-old girl, against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.^[6]

Criminal Case No. 1388 for Rape under Article 335 of the RPC and as amended by RA 8353 and RA 7659

That on or about the year 1997, at Sitio Palali, Barangay Hidhid, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, said accused, did then and there, willfully, unlawfully and feloniously, have carnal knowledge of [his] own daughter BBB, a 13-year-old girl, against her will and without his consent, to her damage and prejudice.

CONTRARY TO LAW.^[7]

When arraigned with the assistance of his counsel from the Public Attorney's Office (PAO), appellant pleaded not guilty to all the charges.^[8]

In **Criminal Case Nos. 1381 and 1382**, the prosecution presented AAA, whose testimony is summarized as follows:

AAA was raped by her father, the appellant.^[9] The first incident occurred at nighttime, inside their house, but AAA could not recall the exact date when it happened.^[10] At that time, her mother was already dead for more or less three months^[11] and she was home, together with her two younger brothers, her sister BBB, and appellant.^[12] While she and her siblings were sleeping inside their room, appellant, who was beside her, removed her shorts and panty, went on top of her,^[13] then inserted his penis in her vagina.^[14] She felt pain after that.^[15] However, she could not ask help from her brothers, who were sound asleep, because of fear as her father was then holding a bolo.^[16]

The second incident took place when she was in grade II inside a hut in the mountain of Hihhid, Matnog, Sorsogon.^[17] As in the first incident, the second rape happened at nighttime while she, her brothers, and sister were sleeping. Again, appellant removed her shorts and panty then inserted his penis in her vagina.^[18] These incidents were allegedly repeated for the third, fourth, and fifth times. AAA did not have the courage to tell anybody about her ordeal. She only had the chance to reveal the incidents when her sister suffered appendicitis and they needed the assistance of the Department of Social Work and Development or DSWD.^[19] AAA informed the DSWD representative, who reported the matter to the Philippine National Police of Matnog.^[20]

AAA's testimony was corroborated by the medical findings of the Municipal Health Officer (MHO), who also testified^[21] during the trial. The medicate certificate showed that upon examination of AAA's genitalia, her vagina admitted two fingers with difficulty, with lacerations at 3, 6 and 9 o'clock positions. ^[22]

In **Criminal Case Nos. 1387-1388**, the prosecution presented BBB, whose testimony is summarized as follows:

BBB was raped twice by her father, the appellant.^[23] The first incident took place in November 1997 when BBB was more than 12 years old.^[24] At that time, their mother already died.^[25] She was then living with appellant, together with her sister and younger brothers.^[26] It was nighttime and while she and her siblings were sleeping, appellant removed her panty, went on top of her, then inserted his penis in her vagina.^[27] She felt pain after the incident.^[28] She did not call the attention of her siblings, because they were fast asleep and she was afraid of her father who was then holding a bolo.^[29]

The second incident happened in January 1998 when BBB was 14 years old, again in their house. Appellant raped her in the same manner as the first incident.^[30] She kept the ordeal to herself because of fear, but later told her friend about it who in turn relayed the story to her grandmother who was a *barangay* official.^[31] She was instrumental in bringing the matter to the *barangay* captain, the DSWD, and eventually the police authorities.^[32] She was then brought to the hospital where she was examined. A medical certificate^[33] was issued stating that BBB's vagina admitted one finger with healed hymenal laceration at 3 o'clock position.

During the pre-trial, appellant admitted that he was the father of AAA and BBB.^[34] The prosecution likewise presented AAA's and BBB's Certificates of Live Birth^[35] to show their ages at the time of the commission of the crimes as well as to prove that appellant is their father.

The defense, on the other hand, presented the brother of AAA and BBB who testified that he did not believe that their father could rape her sisters.^[36]

In a sudden turn of events, more than four years after they testified in court for the prosecution, AAA and BBB retracted their previous testimonies that they were raped by their father. AAA explained that she was recanting her previous testimony because she had forgiven her father and he already suffered for a long time and repented for what he had done.^[37] She claimed that she filed the case against her father because the latter had been maltreating her.^[38] BBB likewise recanted her earlier testimony and claimed that she had forgiven appellant.^[39]

On July 31, 2006, the RTC rendered a Decision^[40] convicting appellant of all the charges against him. The dispositive portion of the decision reads:

WHEREFORE, premises considered, accused MARCIANO DOLLANO, JR.'S GUILT having been established beyond reasonable doubt, he is hereby sentenced as follows:

a) **In Criminal Case Nos. 1381 and 1382** (For: Statutory Rape) he is meted the penalty of RECLUSION PERPETUA for EACH count of Statutory Rape, and to indemnify the victim [AAA] the amounts of Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages;

b) **In Criminal Cases Nos. 1387 and 1388** (For Rape) he is meted the penalty of RECLUSION PERPETUA for EACH count of Rape, and to indemnify the victim [BBB] the amounts of **Php50,000.00** as civil indemnity and another **Php 50,000.00** as moral damages.

With costs *de oficio*.

The preventive imprisonment already served by said accused shall be credited in the service of his sentences, pursuant to Article 29 of the Revised Penal Code, as amended.

SO ORDERED.^[41]

Notwithstanding the recantation of AAA and BBB, the RTC gave credence to their earlier testimonies wherein they clearly narrated how appellant raped them. In Criminal Case Nos. 1381 and 1382, the court appreciated the minority of AAA who was then less than 12 years old. In Criminal Case Nos. 1387 and 1388, the RTC did not impose the supreme penalty of death because the exact age of BBB at the time of the commission of the crime was not stated in the Information, although it was adequately established by the prosecution. In all of the cases, the trial court did not appreciate the circumstance of relationship between AAA and BBB on the one hand, and appellant, on the other, because in their certificates of live birth, although appellant appeared to be their father, the names of their mothers were not the same.^[42] The court also explained that recantation does not necessarily negate an earlier declaration.^[43] Finally, the court declared that, to be effective, pardon must be bestowed before the institution of the criminal action.^[44]

On appeal, the CA affirmed with modification the RTC decision, the dispositive portion of which reads:

WHEREFORE, the foregoing considered, the assailed Decision is **AFFIRMED** with the **MODIFICATION** that the amount of civil indemnity, in each case, is increased to P75,000.00 and that accused-appellant is further ordered to pay, in each case, P25,000.00 as exemplary damages. Costs against the accused-appellant.

SO ORDERED.^[45]

The appellate court sustained the appellant's conviction based on the testimonies of private complainants and the medical findings of the examining physicians.^[46] The CA doubted the voluntariness of private complainants' retractions of their earlier testimonies and considered them unworthy of credence.^[47] Contrary, however, to the RTC's conclusion, the appellate court appreciated the qualifying circumstance of relationship, since AAA's and BBB's certificates of live birth show that appellant is the father of the private complainants. Although the exact age of BBB was not stated in the information, the appellate court appreciated the circumstance of minority as the evidence showed that BBB was indeed below 18 years of age at the time of the commission of the offense and that the offender is her own father. Hence, were it not for RA 9346,^[48] the supreme penalty of death should have been imposed. Thus, the CA meted the penalty of *reclusion perpetua*. The CA likewise modified the civil liabilities of appellant.

Hence, this appeal.

In a Resolution^[49] dated September 14, 2009, we notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. However, both parties manifested that they are both adopting their respective briefs before the CA as their supplemental briefs, as their issues and arguments had been thoroughly discussed therein. Thereafter, the case was deemed submitted for decision.

In his Brief, appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES.

II.

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.^[50]

Appellant faults the CA in giving weight to the testimonies of AAA and BBB, considering that their narration of how the crime was allegedly committed was overly generalized and lacked specific details.^[51] He questions private complainants' failure to offer resistance and to ask for help during the alleged commission of the offense. Finally, appellant insists that the court should not have ignored the retraction made by private complainants.

The appeal must fail.

The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly