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Guban ₱50,000.00 as indemnity and ₱25,000.00 as temperate damages.

Costs *de oficio.*

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and *Azcuna, JJ.*, concur.

Ynares-Santiago, J., on official leave.

SECOND DIVISION

[G.R. No. 144590. February 7, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO F. PARADEZA,** *accused-appellant.*

SYNOPSIS

Accused-appellant Romeo F. Paradeza was convicted of rape by the Regional Trial Court, Iba, Zambales, and was sentenced to suffer the penalty of *reclusion perpetua.* Appellant seasonably filed his notice of appeal. The Public Attorney's Office, however, as counsel for appellant, filed a motion to withdraw his appeal.

The Supreme Court, in the interest of justice and in the exercise of its sound discretion, granted appellant's motion to withdraw appeal. According to the Court, in withdrawing his appeal, appellant has accepted and recognized that the trial court's judgment of conviction and his sentence thereunder

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is conclusive upon him. His action should also be viewed as showing full respect for the ultimate authority of the Court, an essential element for an effective criminal justice system under the rule of law in a democratic society. His exercise of the option to withdraw appeal before the case is submitted for the Court's decision, but fully cognizant of its legal consequences at this stage of the case, not only saves the Court precious time and resources. It also opens soonest the path for the reformation of the contrite offender, pursuant to the ideal of a just and compassionate society envisioned in our fundamental law.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; WITHDRAWAL OF APPEAL; DISCRETIONARY UPON THE COURT AFTER FILING OF APPELLEE'S BRIEF.**— Under Rule 50, Section 3 of the 1997 Rules of Civil Procedure, the withdrawal of an appeal is a matter of right before the filing of the appellee's brief. After that, withdrawal may be allowed in the discretion of the court. Said Rule is applicable to this case pursuant to Rule 124, Section 18 of the 2000 Rules of Criminal Procedure. In the present case, accused-appellant's motion to withdraw his appeal was made only after the OSG had filed the Brief for Appellee. However, the Court had required appellant to file his Reply Brief per its Resolution dated December 10, 2001. It could, therefore, be said that the accused-appellant had not yet completed the process of filing briefs when he moved to withdraw his appeal, a situation which may call for a more liberal rule. Additionally, it is our impression that from the records of this case, appellant is hardly literate functionally and of very low socio-economic standing as a mere *bangus* fry catcher. In making his appeal, he is actually wagering his life as against his sentence below, a point not often stressed to or understood by the convict. In any event, we are persuaded that this Court admittedly has the discretion whether to grant or not the withdrawal sought.

2. **ID.; ID.; ID.; RIGHT TO APPEAL IS A MERE STATUTORY PRIVILEGE AND MAY BE WAIVED.**— An appeal is a "resort to a superior (*i.e.*, appellate) court to review the decision of an inferior (*i.e.*, trial) court or administrative agency." As a statutory remedy to correct errors which might have been committed by the lower court, the object of an appeal is simply and solely

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the protection of the accused. The right to appeal is a mere statutory privilege and is not a natural right or part of the due process. Like any other right or privilege, it may be waived. If a fundamental right of an accused enshrined in the Bill of Rights, such as the right against self-incrimination or the right to remain silent, among others, may be deemed waived depending on the circumstances of a given case, then with more reason may the right to appeal, which is merely statutory, be also waived validly, subject as in this case to the sound discretion of the Court.

3. **ID.; ID.; ID.; MOTION TO WITHDRAW APPEAL GRANTED; IN WITHDRAWING HIS APPEAL, APPELLANT ACCEPTED AND RECOGNIZED THAT THE TRIAL COURT'S JUDGMENT OF CONVICTION AND HIS SENTENCE THEREUNDER IS CONCLUSIVE UPON HIM.**— A person accused and convicted of an offense may withdraw his appeal not only because he is guilty as charged. There could be other reasons. It could be due to his prior erroneous perception of the applicable provision of law, or of the decision itself. He may feel that to seek a pardon might be the better and faster remedy. Regardless of his reasons, in our view, he is within his rights to seek the withdrawal of his appeal. This option should not be closed to herein accused-appellant except for clearly important substantial reasons of law and policy. Appellant in withdrawing his appeal has accepted and recognized that the trial court's judgment of conviction and his sentence thereunder is conclusive upon him. He will remain in custody of the law and will continue to serve the sentence imposed by the lower court as the final verdict. His action should also be viewed as showing full respect for the ultimate authority of this Court, an essential element for an effective criminal justice system under the rule of law in a democratic society. His exercise of the option to withdraw appeal before the case is submitted for this Court's decision, but fully cognizant of its legal consequences at this stage of the case, not only saves the Court precious time and resources. It also opens soonest the path for the reformation of the contrite offender, pursuant to the ideal of a just and compassionate society envisioned in our fundamental law. Considering the particular circumstances of this case, this Court is not without justifiable reasons to act favorably on his motion.

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APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

RESOLUTION

QUISUMBING, *J.*:

At issue is whether this Court could grant the motion to withdraw the appeal filed by accused-appellant, despite the opposition of the Office of the Solicitor General.

In the judgment[1] dated June 7, 2000, of the Regional Trial Court of Iba, Zambales, Branch 69, in Criminal Case No. RTC-2511-I, the appellant, Romeo F. Paradeza, was found guilty of rape and sentenced to suffer the penalty of *reclusion perpetua*.[2]

At the time of the incident in August 1998, appellant was a resident of Macarang, Palauig, Zambales, where he worked as a fisherman engaged in catching *bangus* (milkfish) fry. The private complainant, Lailani Gayas, lived with her parents a few houses away from appellant. Lailani was then 26 years old but had the mentality of a child 6 to 7 years old.

On September 11, 1998, the Office of the Provincial Prosecutor of Zambales charged the appellant of rape allegedly committed as follows:

> That on or about the 13th day of August, 1998, at about 7:00 to 8:00 o'clock in the evening, at Brgy. Macarang, in the Municipality of Palauig, Province of Zambales, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd design(s) and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with and carnal knowledge of one Lailani E. Gayas, a woman with mental disability and/or emotional disorder, without her consent and against her will, and the same accused knew of said disability of Lailani E. Gayas, to the damage and prejudice of the latter.

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[1] Records, pp. 261-282.

[2] *Id.* at 282.

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CONTRARY TO LAW.[3]

When arraigned, appellant with assistance of counsel *de parte* pleaded not guilty to the charge. Pre-trial then ensued, during which the parties agreed to the following stipulation of facts:

1. The identity of the accused;
2. The nickname of the accused is "Rago";
3. The name of the victim was Lailani Gayas and they are neighbors in Barangay Macarang, Palauig, Zambales;
4. The victim is mentally retarded, illiterate [could not read and write]; and
5. The existence of the medical records issued by the Municipal Health Officer of Palauig, Zambales, Dr. Nicanor Egaila.[4]

The pre-trial conference was then terminated and Criminal Case No. RTC 2511-I was accordingly tried.

The prosecution's evidence established that:

Early in the evening of August 13, 1998, complaining witness was at their house in Macarang, Palauig, Zambales with her younger brother Joseph, who was then watching TV[5] The victim was about to go out of their house when appellant, who was about to enter, grabbed her.[6] Appellant then brought her back inside the house and laid her on a bamboo bed.[7] He undressed her and removed her underwear. He took out a knife, which he placed on top of the "*banguera.*"[8] The victim became very frightened as a result.[9] Appellant then fondled her breasts. He undressed himself, went

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[3] *Id.* at 2.

[4] *Id.* at 29.

[5] TSN, November 25. 1998, p. 7.

[6] *Id.* at 8.

[7] *Id.* at 8–9.

[8] *Id.* at 11.

[9] *Ibid.*

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on top of private complainant, and inserted ("*tinusok*")[10] his phallus ("*buto*") inside her vagina.[11] She felt pain as a result and noticed blood flow from her private part.[12] Appellant covered her mouth with his hands and told her not to tell his wife, Vivian.[13] Appellant then twisted her arms. After satiating his lust, appellant used her clothing to wipe her pudendum. Appellant dressed her. After putting his clothes on, he went home.

Private complainant told her grandmother and her mother, Carmelita Gayas, about the incident. Carmelita later brought the victim to Dr. Nicanor Egalla, Municipal Health Officer of Palauig, Zambales for a medico-legal examination. Dr. Egalla found the victim to be mentally retarded.[14] His examination of her private parts disclosed "Healed laceration of the hymen at 3:00, 6:00, and 9:00 o'clock positions"[15] and a fresh "laceration at 6:00 o'clock position" of the victim's vulva.[16] Dr. Egalla declared that the genital injuries suffered by private complainant were consistent with sexual intercourse.[17]

The victim was also referred by the Department of Social Welfare and Development (DSWD) to Estrella B. de Sesto, a professional psychologist and guidance counselor of Columban College, Olongapo City, for a psychological examination. Ms. de Sesto found that while the victim had a chronological age of 26 years, her mental ability was that of a 6- or 7-year-old child.[18]

Appellant raised the defense of denial and alibi. He averred that at the time of the incident he was out at sea the whole

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[10] *Supra*, note 6.

[11] *Supra*, note 7 at 9.

[12] *Id.* at 10.

[13] *Id.* at 10-11.

[14] TSN, April 21, 1999, pp. 8–9, 19–22.

[15] Exh. "A", Records, p. 7; TSN, April 21, 1999, p. 10.

[16] *Ibid.*; *Id.*, at 10-12.

[17] *Supra*, note 14 at 12-13.

[18] TSN, February 24, 1999, p. 12.

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night with his wife catching *bangus* fry.[19] Appellant declared that he then sold his catch to his neighbor, one Noel Apsay, after which he went to sleep.[20] He also claimed that the reason why he was charged with rape was due to his refusal to heed the demand of the victim's grandmother that he vacate the place where he was residing.[21] He also declared that private complainant was not a credible witness, as she was widely known in their neighborhood to be a "flirt."[22] He did admit knowing that the victim had a mental disability.[23]

On rebuttal, the prosecution presented Albert Araña, *barangay* captain of Macarang, Palauig, Zambales, who declared that he had known the victim for eight (8) years or so and refuted appellant's allegation that she was a woman of loose morals.[24] He also testified that he knew the victim's family and described them as a poor and peaceable family, not known for creating trouble in the community.[25]

The trial court found complainant to be a credible witness and, as earlier stated, convicted appellant of the offense charged and sentenced him to suffer the penalty of reclusion perpetua.

Seasonably, appellant filed his notice of appeal anchored on the sole assignment of error that:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.[26]

On April 3, 2002, however, the Public Attorney's Office, as counsel for appellant, filed a motion to withdraw his appeal.[27]

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[19] TSN, June 30, 1999, pp. 4, 9.

[20] *Id.* at 5.

[21] *Id.* at 6.

[22] *Id.* at 7, 13-14.

[23] *Id.* at 10-11.

[24] TSN, January 12, 2000, pp. 4-5, 7.

[25] *Id.* at 6.

[26] *Rollo*, p. 55.

[27] *Id.* at 154-155.

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Earlier, the Brief for the appellant was filed on June 1, 2001, and the Brief for the appellee was filed on November 20, 2001. In our resolution dated July 17, 2002, we required the Solicitor General to comment on said motion.[28] The OSG, in its comment seeking stiffer penalties, pointed out that since the appellee as well as the appellant already filed briefs, under the Rules of Court, the approval of appellant's motion to withdraw his appeal is now a matter of discretion on the part of this Court.[29]

It is not amiss to point out that at this time the case is not yet submitted for our decision. The only question before us now is whether or not to grant appellant's motion to withdraw his appeal.

Under Rule 50, Section 3 of the 1997 Rules of Civil Procedure,[30] the withdrawal of an appeal is a matter of right before the filing of the appellee's brief. After that, withdrawal may be allowed in the discretion of the court. Said Rule is applicable to this case pursuant to Rule 124, Section 18 of the 2000 Rules of Criminal Procedure.[31] In the present case, accused-appellant's motion to withdraw his appeal was made only after the OSG had filed his Reply Brief per its Resolution dated December 10, 2001. It could therefore be said that the accused-appellant had not yet completed the process of filing briefs when he moved to withdraw his appeal, a situation which may call for a more liberal rule. Additionally, it is our impression that from the records of this case, appellant is hardly literate functionally and of very low socio-economic standing as a mere *bangus* fry catcher. In making his appeal, he is actually wagering his life as against his sentence below, a point

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[28] *Id.* at 159.

[29] *Id.* at 164.

[30] SEC. 3. *Withdrawal of appeal.* — An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court.

[31] SEC. 18. *Application of certain rules in civil procedure to criminal cases.* — The provisions of Rules 42, 44 to 46, and 48 to 56 relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with the provisions of this Rule.

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not often stressed to or understood by the convict. In any event, we are persuaded that this Court admittedly has the discretion whether to grant or not the withdrawal sought.

An appeal is a "resort to a superior (*i.e.*, appellate) court to review the decision of an inferior (*i.e.*, trial) court or administrative agency."[32] As a statutory remedy to correct errors which might have been committed by the lower court, the object of an appeal is simply and solely the protection of the accused.[33] The right to appeal is a mere statutory privilege and is not a natural right or part of the due process.[34] Like any other right or privilege, it may be waived. If a fundamental right of an accused enshrined in the Bill of Rights, such as the right against self-incrimination or the right to remain silent, among others, may be deemed waived depending on the circumstances of a given case, then with more reason may the right to appeal, which is merely statutory, be also waived validly, subject as in this case to the sound discretion of the Court.

A person accused and convicted of an offense may withdraw his appeal not only because he is guilty as charged. There could be other reasons. It could be due to his prior erroneous perception of the applicable provision of law, or of the decision itself. He may feel that to seek a pardon might be the better and faster remedy. Regardless of his reasons, in our view, he is within his rights to seek the withdrawal of his appeal. This option should not be closed to herein accused-appellant except for clearly important substantial reasons of law and policy.

Appellant in withdrawing his appeal has accepted and recognized that the trial court's judgment of conviction and his sentence thereunder is conclusive upon him. He will remain in custody of the law and will continue to serve the sentence imposed by the lower court as the final verdict. His action should also be viewed as showing full respect for the ultimate authority of this Court, an essential element for an effective

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[32] BLACK'S *LAW DICTIONARY* (5th Ed. 1979) 88.

[33] *U.S. v. Laguna*, 17 Phil. 532, 540 (1910).

[34] *U.S. v. Yu Ten*, 33 Phil. 122, 127 (1916).

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criminal justice system under the rule of law in a democratic society. His exercise of the option to withdraw appeal before the case is submitted for this Court's decision, but fully cognizant of its legal consequences at this stage of the case, not only saves the Court precious time and resources. It also opens soonest the path for the reformation of the contrite offender, pursuant to the ideal of a just and compassionate society envisioned in our fundamental law. Considering the particular circumstances of this case, this Court is not without justifiable reasons to act favorably on his motion.

WHEREFORE, in the interest of justice and in the exercise of the sound discretion of this Court, the Motion to Withdraw Appeal of accused-appellant ROMEO F. PARADEZA is hereby *GRANTED*.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Austria-Martinez, and *Callejo, Sr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 152158. February 7, 2003.]

WALLEM PHILIPPINES SHIPPING INC. and SEACOAST MARITIME CORPORATION, *petitioners, vs.* **PRUDENTIAL GUARANTEE & ASSURANCE INC. and COURT OF APPEALS,** *respondents.*

SYNOPSIS

Private respondent Prudential Guarantee & Assurance Inc. (Prudential) brought an action for damages and attorney's fees against Wallem Philippines Shipping, Inc. (Wallem) and