352 Phil. 866

EN BANC

[G.R. No. 124676, May 20, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RESTITUTO MANHUYOD, JR., ACCUSED-APPELLANT.

D E C I S I O N

DAVIDE, JR., J.:

This is a case of a father having raped his 17-year old daughter after the effectivity of R.A. No. 7659.[1] Accused could thus have been meted out the death penalty pursuant to Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, if found guilty beyond reasonable doubt. However, here, the trial court's imposition of capital punishment was not based on said statute, but by reason of the aggravating circumstance of relationship under Article 15 of the Revised Penal Code.

However repulsive and condemnable the act of a father raping his daughter, yet, the Constitution mandates that an accused is entitled to the presumption of innocence. Thus, after a scrutiny of the record and the evidence in this case, we find ourselves unable to affirm the judgment of the trial court. Acquittal then is compelled by law since the presumption of innocence was not overcome, the conviction having been based on hearsay evidence and a miscomprehension of the rule on statements forming part of the *res gestae*.

On 6 June 1995, before the Central Visayas Office (CEVRO) of the National Bureau of Investigation (NBI), a complaint[2] for rape was filed by Yolanda Manhuyod, accused's wife and mother of the offended party, Relanne S. Manhuyod. The complaint charged accused with having raped Relanne, then 17 years of age, on 20 April 1995 and 3 May 1995. Immediately upon the filing of the complaint, Relanne was examined by Dr. Tomas Refe, Medico-Legal Officer III of the CEVRO, NBI, whose findings and conclusions in Living Case No. 95-MI-II,[3] were as follows:

> GENITAL EXAMINATION:
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> Pubic hairs, fully grown, abundant. Labia mejora, gaping. Labia minora, gaping posteriorly. Fourchette, tense. Vestibular mucosa, reddish to violaceous. Hymen, moderately thick, wide, with old healed lacerations, superficial at 8:00 o'clock and deep at 4:00 o'clock positions corresponding to the face of a wacth [sic]; edges of these lacerations are rounded and non-coaptable. Hymenal orifice, admits a tube 2.8 cms. in diameter with moderate resistance. Vaginal walls, moderately tight and rugosities, moderately prominent.

CONCLUSIONS:

1. No evidence of extragenital physical injury noted on the body of the Subject at the time of examination.

2. Hymenal orifice, 2.8 cms. in diameter distensible as to allow complete penetration of an average size adult penis in erection without producing further laceration.

On 8 June 1995, Yolanda and Relanne gave their sworn statements[4] to Atty. Oscar Tomarong, Officer-in-Charge of the NBI Sub-office in Dipolog City. Then in a letter[5] dated 9 June 1995 to the Office of the Provincial Prosecutor of Dipolog City, Atty. Tomarong recommended the prosecution of accused for rape, as charged by Yolanda and Relanne. On even date, Relanne, assisted by Yolanda, filed a complaint[6] with the Provincial Prosecutor's Office charging herein accused with rape committed on 3 May 1995.

After due proceedings, the Office of the Provincial Prosecutor of Zamboanga del Norte, through Valeriano Lagula, Second Assistant Provincial Prosecutor and Officer-in-Charge, filed with Branch 11 of the Regional Trial Court of Zamboanga del Norte, sitting in Sindangan, Zamboanga del Norte, an information charging accused with rape, allegedly committed as follows:

> That, in the morning, on or about the 3rd day of May, 1995, in the Municipality of Liloy, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one RELANNE S. MANHUYOD, his 17 year old daughter, against her will and without her consent, as a result of which she became pregnant.
>
> CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code).[7]

At his arraignment on 23 June 1995 following his arrest and commitment in the Provincial Jail, accused entered a plea of not guilty. Pre-trial and trial were then set for 18 June 1995.[8] The record, however, does not disclose if pre-trial was actually conducted as scheduled.

On 6 July 1995, the prosecution, with conformity of the accused, filed a Motion to Dismiss[9] on the ground that Relanne and Yolanda had executed a Joint Affidavit of Desistance,[10] declaring that they "lost interest in the further prosecution of the [case] as the case arose out of a family conflict which was [already] patched up;" thus the prosecution declared that "without the testimonies of the complainants,

In its resolution[11] of 17 July 1995, the trial court denied the Motion to Dismiss on the following grounds: (1) the affidavit of desistance could not justify dismissal of the complaint, as the so-called "pardon" extended to accused by affiants in the affidavit of desistance was made after the filing of the information,[12] hence could not serve as the basis for dismissing the case;[13] (2) once a complaint for a private crime was filed, the State effectively became the offended party and any pardon given by the private complainant would be unavailing; and (3) Section 20-A of R.A. No. 7659 provides that any person charged under the Act for an offense where the imposable penalty is *reclusion perpetua* to death would not be allowed to take

advantage of the provision on "plea-bargaining." The trial court then set the case for pre-trial and trial on 18 and 25 of August and 1 September 1995.

As Relanne and Yolanda did not appear at pre-trial on 18 August 1995, the court issued an order[14] declaring pre-trial terminated and ordering trial to proceed on 25 August and 1 September 1995.

On 25 August 1995, as well as on the succeeding dates thereafter set by the trial court for Relanne and Yolanda to testify, to wit: 8 September 1995;[15] 22 September 1995;[16] 6 October 1995;[17] and 27 October 1995,[18] mother and daughter did not appear in court, despite the court's orders directing the prosecutor to file a complaint to hold them for indirect contempt[19] and ordering NBI agents Atty. Oscar Tomarong and Atty. Friolo Icao, Jr. to arrest them.[20]

In a 1st indorsement[21] dated 6 May 1995, Atty. Tomarong reported to the trial court that, among other things, Relanne and Yolanda had left for Cebu probably to elude arrest after having learned from both the print and broadcast media that the court had ordered their arrest; Yolanda, a public school teacher, had filed an indefinite leave of absence; and Relanne had not been attending her classes. The NBI thus asked for more time to arrest Relanne and Yolanda, but due to its failure to arrest and produce them in court both at the scheduled hearings of 6 October and 27 October 1995, the prosecution rested its case solely on the basis of the testimonies of NBI agent Atty. Tomarong, NBI agent Atty. Icao, Jr. and NBI Medico-Legal Officer Dr. Refe, together with the documents they identified or testified on. The court then gave the prosecution 10 days to submit a formal offer of exhibits, and announced to the parties that if the exhibits would be admitted, the defense could file a demurrer to evidence which, if denied, would be followed by the defense presenting its evidence beginning 15 December 1995.[22]

In the prosecution's formal offer of its exhibits dated 9 November 1995,[23] the following exhibits were offered: (1) "A," the complaint sheet accomplished and filed by Yolanda with the NBI, CEVRO; (2) "B," the sworn statement of Yolanda given before Atty. Tomarong and subscribed and sworn to before Atty. Icao, Jr. on 8 June 1995; (3) "C," the sworn statement of Relanne given before Atty. Icao, Jr. on 8 June 1995; and (4) "D," the medical certificate issued by Dr. Refe. NBI agent Tomarong identified Exhibits "A" and "B,"[24] NBI agent Icao identified Exhibit "C,"[25] while Dr. Refe identified Exhibit "D." [26]

Accused objected to the admission of Exhibits "A," "B" and "C" on the ground that they were hearsay, and to Exhibit "D" on the ground that the medical certificate was not conclusive as to the commission of rape and the contents in said exhibit were not corroborated on its material points by the offended party since the latter did not testify.[27]

In its order[28] of 15 November 1995, the trial court admitted all the foregoing exhibits as "exception[s] to the hearsay rule," and ordered that the defense commence presenting its evidence on 15 December 1995.

On 9 November 1995, the defense filed a demurrer to evidence,[29] which, however, the trial court denied in its resolution of 23 November 1995[30] for being "devoid of merit." The trial court held that Exhibits "B" and "C" were convincing as they

mentioned details which could not have been concocted, as such, they "constitute[d] part of the res gestae, an exception to the hearsay rule;" and as to the statement of Dr. Refe " in answer to clarificatory questions (pp. 5 to 6 t.s.n. hearing on 22 September 1995)," while the same may have had "all the earmarks of hearsay," the statement was admissible for not having been objected to. Finally, the trial court held that since it was a settled rule that an affidavit was not considered the best evidence if the affiant was available, then, as in this case where Relanne and Yolanda were unavailable, their sworn statements were admissible for being "the best evidence."

The trial court likewise denied[31] the accused's motion[32] to reconsider the resolution, and set the reception of accused's evidence on 15 December 1995, which, however, was subsequently reset to 12 January 1996.[33]

In his first and second manifestations,[34] accused informed the trial court that he was waiving his right to present his evidence and asked that the case be submitted for decision. He reiterated this waiver at the hearing on 12 January 1996,[35] which then prompted the court to order the parties to simultaneously submit their respective memoranda within a non-extendible period of 20 days. The record, however, once more fails to disclose that any of the parties so filed.

On 23 February 1996, the trial court promulgated its decision,[36] the decretal portion of which read as follows:

> WHEREFORE, the Court finds accused, SPO2 Restituto Manhuyod, Jr. guilty of the crime of Rape by force and intimidation with [the] aggravating circumstance of relationship under Article 15 of the Revised Penal Code and sentencing him to "suffer the penalty of DEATH" (R.A. 7659), and to indemnify the complainant P50,000. (People vs. Magaluna., 205 SCRA 266 [1992]).
>
> Pursuant to Circular No. 4-92-A of the Supreme Court [let] accused immediately be transferred to the Bureau of Corrections in Muntinlupa, Metro Manila.
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> Costs de oficio.
>
> SO ORDERED.

On 26 February 1996, accused filed his Notice of Appeal.[37]

We accepted the Appeal on 3 December 1996.

In his Accused-Appellant's Brief filed on 30 April 1997, accused imputes to the trial court the commission of the following errors:

> I
>
> IN NOT DISMISSING THE CRIMINAL COMPLAINT AGAINST APPELLANT FOR EVIDENT LACK OF INTEREST TO PROSECUTE.
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> II
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> IN ADMITTING AS EVIDENCE THE HEARSAY TESTIMONY OF THE PROSECUTION WITNESSES DESPITE THE TIMELY AND VEHEMENT

OBJECTIONS OF THE DEFENSE INASMUCH AS THEY HAD NO PERSONAL KNOWLEDGE OF THE CRIME ASCRIBED AGAINST APPELLANT.

III

IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF APPELLANT WAS NOT PROVED BEYOND REASONABLE DOUBT.

Accused jointly discusses these assigned errors, in the main, reiterating his arguments in his demurrer to evidence, ***i.e.,*** the sworn statements of Relanne and Yolanda were inadmissible hearsay and could not be part of the *res gestae* under Section 42, Rule 130 of the Rules of Court. Moreover, the NBI agents and medico-legal officer had no personal knowledge as to what actually and truthfully happened; hence, their testimony as to what Relanne and Yolanda narrated were likewise inadmissible hearsay. Accused further contended that what was established during trial was that Relanne and Yolanda were no longer interested in pursuing the criminal complaint against him; hence the case should have been dismissed for their lack of interest to prosecute the same.

In its Brief for the Appellee, the Office of the Solicitor General agreed with the trial court and prayed for the affirmance *in toto* of the challenged decision. As accused waived the filing of a Reply Brief in his Manifestation filed on 16 April 1997, this case was then deemed submitted for decision on 3 February 1998.

As we stated at the outset, the accused must be acquitted.

Indeed, the evidence for the prosecution failed miserably in meeting the quantum of proof required in criminal cases to overturn the constitutional presumption of innocence. Section 2 of Rule 133 expressly provides that an accused in a criminal case is entitled to an acquittal unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean a degree of proof as, excluding possibility of error, produces absolute certainty; all that is required is moral certainty, or that degree of proof which produces a conviction in an unprejudiced mind.

In this case, in view of the desistance of the offended party, Relanne, and her mother, Yolanda, and their failure to appear and testify at trial, the prosecution was left with nothing but their sworn statements (Exhibits "C" and "B," respectively); the sworn charge sheet (Exhibit "A") of Yolanda; and the testimonies of the NBI agents before whom the sworn statements were given or subscribed to and the NBI medico-legal officer who examined Relanne on 6 June 1995.

We first scrutinize the testimonies of the NBI agents and the medico-legal officer.

NBI agent Atty. Tomarong identified the charge sheet signed by Yolanda (Exh. "A") and her sworn statement (Exh. "B"), then detailed the questions he asked and information he obtained from Yolanda as to the alleged rape.[38] On his part, NBI Agent Atty. Icao, Jr. identified Relanne's sworn statement (Exh. "C") and testified in the same manner as Atty. Tomarong.[39] Finally, NBI Medico-Legal Officer Refe identified the medical certificate he issued (Exhibit "D"), then testified as to the details of his examination of Relanne and his findings.[40]